Supreme Court, U. S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1979

No. 79-2033

CAROL C. WOODWARD, AS ADMINISTRATOR OF THE ESTATE OF CHARLES C. WOODWARD, DECEASED, AND CAROL C. WOODWARD, INDIVIDUALLY,

Appellant,

vs.

BURNHAM CITY HOSPITAL, A CORPORATION, AND GEORGE GREEN AND STAN J. BOBOWSKI,

Appellees.

ON APPEAL FROM THE SUPREME COURT OF ILLINOIS

JURISDICTIONAL STATEMENT

LEONARD M. RING
SHELDON H. NAHMOD
LEONARD M. RING
& ASSOCIATES
111 West Washington Street
Chicago, Illinois 60602
(312) 332-1765
Attorneys for Appellant

Gunthorp-Warren Printing Company, Chicago • Financial 6-6565

TABLE OF CONTENTS.

PAGE

Jurisdictional Statement 1

Opinions Below 2

Jurisdiction 2

Questions Presented 2

Constitutional Provisions and Statutes Involved 3

Statement of the Case 4

The Questions Are Substantial 5

Conclusion 15

Appendix A A1

Decision of the Illinois Supreme Court, dated October 2, 1970 ..... A1

Appendix B A27

Illinois Supreme Court denial of petition for rehearing, dated March 28, 1980 ..... A27

Appendix C A28

Ruling of the Trial Court, dated August 15, 1977 ... A28

Final order of the Trial Court, dated August 22, 1977 ..... A29

Plaintiff's Response to Defendant Burnham City Hospital's Motion to Dismiss, filed June 10, 1977 .... A30

Plaintiff's Response to Defendant Green's Motion for Summary Dismissal, filed June 10, 1977 ..... A32

Appendix D A34

Notice of Appeal, filed June 20, 1980 ..... A34

Proof of Service of Notice of Appeal, filed June 20, 1980 ..... A35

CITATIONS.

Cases.

Arneson v. Olson, 270 N. W. 2d 125 (S. Ct. N. Dak. 1978) 6, 11

Board of Regents v. Roth, 408 U. S. 564 (1972) 13

Boddie v. Connecticut, 401 U. S. 371 (1971) 8, 14

Bounds v. Smith, 430 U. S. 817 (1977) 8, 14

Frontiero v. Richardson, 411 U. S. 677 (1973) 9, 10

Goldberg v. Kelly, 397 U. S. 254 (1970) 13

Jones v. State Board of Medicine, 97 Idaho 859, 555 P. 2d 399 (1976) 6, 9, 11

Lamb v. Powder River Livestock Co., 132 F. 434 (8th Cir. 1904) 13

Levy v. Louisiana, 391 U. S. 68 (1968) 11

McDonald v. Board of Election Commissioners, 394 U. S. 802 (1969) 11

McGinnis v. Royster, 410 U. S. 263 (1973) 12

Memorial Hospital v. Maricopa County, 415 U. S. 250 (1974) 11

Reed v. Reed, 404 U. S. 71 (1971) 11

San Antonio Indep. School Dist. v. Rodriquez, 411 U. S. 1 (1973) 8, 11

Shapiro v. Thompson, 394 U. S. 618 (1969) 8, 10, 11

United States v. Kubrick, 100 S. Ct. 352 (1979) 6

Wangler Boiler and Sheet Metal Works v. Industrial Comm'r, 287 Ill. 118, 121 (1919) 13

Weber v. Aetna Casualty & Surety Company, 406 U. S. 164 (1972) 12

Wilson v. Iseminger, 185 U. S. 55 (1902) 13
Zablocki v. Redhail, ... 434 U. S. 374 (1978) 12

Laws.

Cal. Civ. Pro. Code Sec. 340.5 (West Cumm. Supp. 1979) 5
Ill. Rev. Stat. ch. 3, sec. 494 13
Ill. Rev. Stat. 1976 Supp. ch. 83, Sec. 22.1 ..... 1, 2, 3, 4, 5
Tex. Rev. Civ. Stat. Ann. art. 4590i, Sec. 10.01 (Vernon Supp. 1978-1979) 5

Miscellaneous.

Illinois Insurance Laws Study Commission, June 1975, pp. 47-60 9
Insurance Services Office, Special Malpractice Review: 1974 Closed Claims Survey, Preliminary Analysis of Survey Results 25-26 (Dec. 1, 1975) 12
Report of the Secretary of H. E. W.'s Commission on Medical Malpractice, p. 12 (1973) 9

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CAROL C. WOODWARD, AS ADMINISTRATOR OF THE ESTATE OF CHARLES C. WOODWARD, DECEASED, AND CAROL C. WOODWARD, INDIVIDUALLY,

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BURNHAM CITY HOSPITAL, A CORPORATION, AND GEORGE GREEN AND STAN J. BOBOWSKI,

Appellees.

ON APPEAL FROM THE SUPREME COURT OF ILLINOIS

JURISDICTIONAL STATEMENT

Appellant Carol C. Woodward, as Administrator of the Estate of Charles C. Woodward, deceased, and individually, appeals from the final judgment of the Supreme Court of Illinois, dated October 2, 1979, holding that Ill. Rev. Stat., 1976, ch. 83 sec. 22.1 (hereafter called Section 22.1 of the Illinois Limitations Act) is not unconstitutional (either facially or as applied) as being violative of the Equal Protection and Due Process Clauses of the United States Constitution. Section 22.1 provides an absolute four-year limitations period for malpractice actions against physicians and hospitals, regardless of patient discovery of injury.

OPINIONS BELOW

The consolidated opinion of the Illinois Supreme Court is reported in 79 Ill. 2d 295, under caption *Anderson* v. *Wagner*,[1] and is reproduced in Appendix A at pp. A1-26.

The Supreme Court's letter reporting denial of a petition for rehearing is reproduced in Appendix B at p. A27. The panel decision of the Fourth District Appellate Court is reported as *Woodward* v. *Burnham City Hospital*, 60 Ill. App. 3d 285 (1979). The ruling and final order of the trial court are unreported but are reproduced in Appendix C at pp. A28, 29.[2]

JURISDICTION

The jurisdiction of this Court is invoked under 28 U. S. C. Sec. 1257(2).

The judgment of the Supreme Court of Illinois, sustaining the constitutionality of Section 22.1 of the Illinois Limitations Act against equal protection and due process challenges, was entered on October 2, 1979. A petition for rehearing was timely filed and was denied on March 28, 1980.

This appeal is being docketed in this Court within 90 days from the denial of rehearing below.

QUESTIONS PRESENTED

Whether Section 22.1 of the Illinois Limitations Act, which provides an absolute four year limitations period for malpractice actions against physicians and hospitals but not other health care providers, violates the Equal Protection Clause of

1. Woodward was consolidated with the earlier filed *Anderson* case by order of the Illinois Supreme Court.

2. Plaintiff's Responses to the defendants' motions to dismiss, raising federal constitutional questions also are not reported but are reproduced in Appendix C at pp. A30-33.

the Fourteenth Amendment because the classifications created are neither justified by a compelling state interest nor necessary, and, alternatively, because they do not substantially further a legitimate legislative purpose.

Whether Section 22.1 of the Illinois Limitations Act, which provides an absolute four year limitations period for malpractice actions against physicians and hospitals, violates the Due Process Clause of the Fourteenth Amendment because, as applied to patients who neither know of, have reason to know of, nor can reasonably discover within four years injuries caused by physicians and hospitals, Section 22.1 takes away, without notice, their right to compensation and destroys their right of access to the courts.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

Fourteenth Amendment, United States Constitution:

> [N]or shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Ill. Rev. Stat., 1976 Supp., ch. 83, par. 22.1 (Section 22.1 of the Illinois Limitations Act):

> 22.1 Tort or breach of contract actions arising from patient care.
>
> No action for damages for injury or death against any physician or hospital duly licensed under the laws of this State, whether based upon tort, or breach of contract, or otherwise, arising out of patient care shall be brought more than 2 years after the date on which the claimant knew, or through the use of reasonable diligence should have known, or received notice in writing of the existence of the injury or death for which damages are sought in the action, whichever of such date occurs first, but in no event shall such action be brought more than 4 years after the date on which occurred the act or omission or occurrence alleged

in such action to have been the cause of such injury or death.

If the person entitled to bring the action is, at the time the cause of action occurred, under the age of 18 years, or insane, or mentally ill, or imprisoned on criminal charges, the period of limitations does not begin to run until the disability is removed.

STATEMENT OF THE CASE

Charles and Carol Woodward filed suit against appellees, Burnham City Hospital and two doctors, for malpractice on December 30, 1976, alleging an erroneous diagnosis of tissue taken from appellant, Charles Woodward, on November 27, 1965. As a result of the erroneous diagnosis, massive steroid treatments were administered for over ten years, causing Charles Woodward to develop a condition known as steroid myopathy which necessitated the amputation of both legs and caused cataracts. Charles died after the complaint was filed, and an amended complaint was filed by Carol Woodward as administrator of the decedent's estate and individually.

The malpractice was first discovered in February 1976, when a sample from the preserved tissue taken in the 1965 biopsy was examined microscopically at another hospital, which test demonstrated that the earlier diagnosis had been erroneous. The circuit court of Champaign County, in response to appellees' motion, dismissed the amended complaint, holding that the actions were barred by section 22.1 of the Limitations Act. A panel of the Fourth District Appellate Court reversed and held Section 22.1 unconstitutional, with one justice dissenting.

The Supreme Court of Illinois granted leave to appeal in this case and another case involving the same statute and consolidated them for hearing and opinion.[3] The Supreme Court thereafter, on October 2, 1979, held Section 22.1 constitutional and

3. *Anderson* v. *Wagner*, 61 Ill. App. 3d 882 (1979), the other consolidated case, which was affirmed by the Illinois Supreme Court, is not involved in this appeal.

expressly rejected the appellant's arguments in both cases that, in addition to violating various provisions of the Illinois Constitution, Section 22.1 violated the Equal Protection and Due Process clauses of the Fourteenth Amendment.

Throughout the trial and appellate proceedings in both *Woodward* and the consolidated case, appellants raised and Appellant Woodward continues to raise the invalidity of Section 22.1 under the Equal Protection and Due Process Clauses.

THE QUESTIONS ARE SUBSTANTIAL

This case deals with the validity of Section 22.1 of the Illinois Limitations Act which sets out an absolute four-year limitations period for malpractice actions against physicians and hospitals regardless of patient discovery of injury. Section 22.1 raises equal protection and due process questions of first impression in this Court which are both *novel* and *important*.

The novelty of these questions and their unsettled aspect are shown in the discussion following in this Jurisdictional Statement. Their importance to the public is clear for several reasons. Large numbers of patients, physicians and hospitals in Illinois are obviously affected by the resolution of these questions. Also, there has been a movement in the states, apparently in response to the so-called medical malpractice insurance crisis, toward comparably short limitations periods for medical malpractice. *See, e.g.*, Tex. Rev. Civ. Stat. Ann. art. 4590i, Sec. 10.01 (Vernon Supp. 1978-1979) (two year limitations period) and Cal. Civ. Pro. Code Sec. 340.5 (West Cum. Supp. 1979) (three year limitations period). Thus these questions have national significance.

There are still other reasons these questions are important to the public. Short limitations periods for medical malpractice, like that in Illinois, create a disadvantaged class of patients—especially indigents—who are injured by medical malpractice but left without a remedy.

Short limitations periods also create a privileged and unique class of physicians and hospitals who are rendered immune from liability. Not only are physicians and hospitals treated better than all other potential defendants, including other professions. They are even given more favorable protection than other medical care providers, at least in Illinois, because the same statutory benefits are not extended to dentists[4], nurses, nurse anesthesiologists[5] and others. In this regard the proper operation of and respect for state legislative processes are also implicated.

Additionally, not only is the Illinois Supreme Court's decision on the federal questions in this case erroneous, but it is *inconsistent in principle* with decisions in other states. While the Illinois Supreme Court apparently applied the traditional equal protection test to Section 22.1's classifications, the Supreme Court of Idaho, after extended consideration, used an intermediate or "means scrutiny" equal protection test in passing on the validity of different but analogous aspects of Idaho's Hospital-Medical Liability Act. *Jones* v. *State Board of Medicine,* 97 Idaho 859, 555 P. 2d 399 (1976). Similarly, the North Dakota Supreme Court used a test with greater "bite" than traditional equal protection in holding unconstitutional North Dakota's Medical Malpractice Act. *Arneson* v. *Olson,* 270 N. W. 2d 125 (S. Ct. N. Dak. 1978).

Finally, the adverse impact of Section 22.1 on patients of physicians and hospitals and its inherent unfairness are starkly illustrated when one contrasts this Court's attitude toward statutes of limitations expressed in *United States* v. *Kubrick,* 100 S. Ct. 352 (1979). *Kubrick,* a non-constitutional case, involved the question of when a medical malpractice cause of

4. Peridontists, oral surgeons, dental reconstruct surgeons all do surgery under circumstances similar to physicians.

5. Anesthesiologists would be members of the privileged class, whereas nurse anesthesiologists would not be protected by Section 22.1, yet they perform the same work.

action "accrues" under the Federal Tort Claims Act. This Court held that such a cause of action accrues when a patient is aware of his injury and its probable cause despite his ignorance of the possibility of negligence. It reasoned:

> "We are unconvinced that for statute of limitations purposes a plaintiff's ignorance of his legal rights and his ignorance of the fact of his injury or its cause should receive idential treatment. *That he has been injured in fact may be unknown or unknowable until the injury manifests itself; and the facts about causation may be in the control of the putative defendant, unavailable to the plaintiff or at least very difficult to obtain.* The prospect is not so bleak for a plaintiff in possession of the critical facts that he has been hurt and who has inflicted the injury. *He is no longer at the mercy of the latter.* There are others who can tell him if he has been wronged, and he need only ask . . . [T]he odds are that a competent doctor will so inform the plaintiff." Id. at 359 (Emphasis added).

This Court's reference in *Kubrick* to a patient's "bleak" prospect is particularly applicable to patients in Illinois because of Section 22.1. As *Kubrick* clearly implies, preventing a patient from bringing a medical malpractice action when the patient's injury can be discovered only after the expiration of a short limitations period, is wrong and offensive to notions of fair play. Such patients are obviously at the mercy of their physicians and hospitals who are thereby encouraged to conceal patient injuries.

Thus, a victim of medical malpractice committed by a federally operated hospital or a physician employed by the Federal government in Illinois and elsewhere, would have all the rights recognized by *Kubrick,* yet a medical malpractice victim of a private physician or state or private hospital in Illinois and other states with similar limitations periods, would be denied those very same rights.

For these reasons as well as the reasons discussed next, the federal questions are substantial.

I.

SECTION 22.1 OF THE ILLINOIS LIMITATIONS ACT VIOLATES THE EQUAL PROTECTION CLAUSE BECAUSE THE SPECIAL FOUR YEAR LIMITATIONS PERIOD FOR MALPRACTICE ACTIONS AGAINST PHYSICIANS AND HOSPITALS IS NEITHER JUSTIFIED BY A COMPELLING STATE INTEREST NOR SHOWN TO BE NECESSARY.

According to the decisions of this Court, the equal protection test known as "strict scrutiny"—which requires a state to show a compelling interest and necessity—is brought into play whenever a fundamental right or interest is adversely affected by a legislative classification. *Shapiro* v. *Thompson, 394 U.S. 618 (1969).* A fundamental right is one which is "explicitly or implicitly" guaranteed by the United States constitution. *San Antonio Indep. School Dist.* v. *Rodriquez,* 411 U. S. 1 (1973). The right of access to the courts in civil cases, a right implicated here, is clearly such a fundamental right. *Boddie* v. *Connecticut,* 401 U. S. 371 (1971); *Bounds* v. *Smith,* 430 U. S. 817 (1977).

Section 22.1's special four year limitations period for malpractice actions against physicians and hospitals draws two lines: (1) between injured patients of physicians and hospitals and injured patients of other medical professionals such as nurses, dentists, and the like and (2) between injured patients of physicians and hospitals and all other persons injured by the tortious conduct of others. Each of these lines creates a disadvantaged class of patients of physicians and hospitals as well as a special and privileged category of physicians and hospitals.

The lines drawn by Section 22.1 impermissibly burden the right of access to the courts of patients of physicians and hospitals with its inflexible four year limitations period. Many patient injuries are slow to be discovered because the injury itself is a subtle and gradually developing one without symptoms at the outset. For example, the injection of an improper drug, or overdose

of a drug, or excessive x-ray or radiation treatment might destroy organs or bone, but work so slowly that its effects surface after four years. In addition, some injuries resulting from operations by their very nature will not be discovered until another operation takes place. A classic example is the sponge, operating utensil or other foreign object negligently left in the body during the course of an operation. Still another situation involves misdiagnosis, as in the present *Woodward* case, where the results are not discovered until years later, with tragic results. Because patients so situated are substantially denied their right of access to the courts by Section 22.1's classification, that classification, as embodied in the four year limitations period, must be supported by a compelling state interest and necessity.

The so-called medical malpractice insurance crisis relied upon by the Illinois Supreme Court does not satisfy the state's obligations under strict scrutiny. First, the state must demonstrate empirically—and it has not—that there was such a crisis in Illinois whereby physicians and hospitals in Illinois were in fact rendered unable to provide medical services. *Frontiero* v. *Richardson*, 411 U. S. 677 (1973). A mere assertion is insufficient to withstand strict scrutiny. In this regard, the emphasis on a crisis in *Illinois* is intentional because it is *Illinois* which must show a compelling state interest. If there was no medical malpractice insurance crisis in Illinois either present or likely when Section 22.1 was enacted—and the Illinois Supreme Court's opinion is virtually silent on this matter—then a compelling state interest is absent.

This skepticism about the existence of such a crisis was also raised by the Idaho Supreme Court in *Jones* v. *State Board of Medicine*, 97 Idaho 859, 555 P. 2d 399, 414-416 (1976). See also Report of the Illinois Insurance Laws Study Commission, June 1975, pp. 47-60, ("[A]s far as the Commission can determine, the issue of cost of medical malpractice insurance has been overblown.") and Report of the Secretary of H. E. W.'s Commission on Medical Malpractice, p. 12 (1973).

Second, if all that can be demonstrated empirically is an increase in the costs of medical malpractice insurance, this interest in cost-reduction, standing alone, is clearly not considered compelling when balanced against infringement of the fundamental right of access to the Courts. *Shapiro* v. *Thompson*, 394 U. S. 618 (1969); *Frontiero* v. *Richardson*, 411 U. S. 677 (1973).

Finally, even if alleviating the so-called medical malpractice insurance crisis were to be considered a compelling state interest, the means used to promote that interest—Section 22.1's four year limitations period for physicians and hospitals—is not necessary. The state could, for example, subsidize medical malpractice insurance where it would otherwise be difficult for physicians and hospitals to obtain, or physicians and hospitals could readily self-insure (e.g. through the Ilinois State Medical Inter-Insurance Exchange) as indeed, many have done. Either approach would avoid Section 22.1's adverse effect on the right of access to the courts of patients injured by the conduct of physicians and hospitals.

It is also relevant that the impact of Section 22.1 on patients of physicians and hospitals is especially severe for indigent patients. Such patients are far less likely than non-indigent patients to discover injuries caused them by the conduct of physicians and hospitals. There are several reasons for this. First, indigents generally are less informed about medical matters, and more intimidated by doctors and hospitals, than non-indigents. Second, patients who suspect injury caused by physicians and hospitals will frequently seek other medical counsel. This obviously requires financial resources which may not be available to indigents. Finally, when one adds to these factors the difficulties generally of discovering gradually developing injuries caused by physicians and hospitals, the practical result is to bar meritorious medical malpractice claims of indigents from Illinois courts.

It is true that this Court has not held wealth discrimination, either intentional or in impact, to be a suspect classification triggering strict scrutiny equal protection. *San Antonio Indep. School Dist.* v. *Rodriquez,* 411 U. S. 1 (1973). Nevertheless, this Court has been sensitive to situations in which discrimination against indigents exists. *Shapiro* v. *Thompson,* 394 U. S. 618 (1969); *McDonald* v. *Board of Election Commissioners,* 394 U. S. 802 (1969); *Memorial Hospital* v. *Maricopa County,* 415 U. S. 250 (1974). When coupled with Section 22.1's infringement of the fundamental right of access to the courts, the disproportionately severe impact on indigents of a four-year limitations period of discovery for injury caused by physicians and hospitals, warrants similar judicial sensitivity as well as a finding that the equal protection clause has been violated.

II.

SECTION 22.1 OF THE ILLINOIS LIMITATIONS ACT VIOLATES THE EQUAL PROTECTION CLAUSE BECAUSE ITS FOUR YEAR LIMITATIONS PERIOD, WHICH DISTINGUISHES BETWEEN MALPRACTICE ACTIONS AGAINST PHYSICIANS AND HOSPITALS AND ALL OTHER MALPRACTICE AND TORT ACTIONS, DOES NOT SUBSTANTIALLY FURTHER A LEGITIMATE LEGISLATIVE PURPOSE.

Even if this Court should be unwilling to apply strict scrutiny equal protection to Section 22.1, nevertheless, because of the important patient interests implicated in being denied access to the courts, the state is required to show at a minimum that its classification *substantially furthers* its objective. Compare *Jones* v. *State Board of Medicine,* 97 Idaho 859, 555 P. 2d 399 (1976) and *Arneson* v. *Olson,* 270 N. W. 2d 125 (S. Ct. N. Dak. 1978). That is, the "classification must rest upon some ground of difference having a fair and substantial relation to the object or the legislation." *Reed* v. *Reed,* 404 U. S. 71 (1971). See also *Levy* v. *Louisiana,* 391 U. S. 68 (1968), *Weber* v.

Aetna Casualty & Surety Company, 406 U. S. 164 (1972), *McGinnis* v. *Royster*, 410 U. S. 263 (1973) and *Zablocki* v. *Redhail*, 434 U. S. 374 (1978).

Substantiality requires more than a mere assertion by the state that Section 22.1 alleviates the so-called medical malpractice insurance crisis. Rather, there must be some reasonable, factual support for the state's claim. Specifically, what has not been shown by the state here is that there was a medical malpractice insurance crisis in Illinois. Furthermore, even if there were such a crisis. Section 22.1 is ineffective to cure it. Many, if not most, medical malpractice injuries will continue to be discovered within four years, so that relatively few claims are eliminated by Section 22.1. See Insurance Services Office, Special Malpractice Review: 1974 Closed Claims Survey, Preliminary Analysis of Survey Results 25-26 (Dec. 1, 1975) (98.1% of all medical malpractice incidents, involving 98.3% of all award dollars, are reported within five years of occurrence).

Moreover, a short statute of limitations only triggers early filing of medical malpractice claims, often before the presence of medical malpractice is ascertained, and is thus self-defeating. Consequently, there is no substantial relation shown between Section 22.1's classification and its asserted purpose of remedying the so-called medical malpractice insurance crisis. Sec. 22.1 thereby violates equal protection.

III.

SECTION 22.1 OF THE ILLINOIS LIMITATIONS ACT VIOLATES THE DUE PROCESS CLAUSE BECAUSE IT IMPERMISSIBLY TAKES AWAY, WITHOUT NOTICE, AN IMPORTANT RIGHT TO COMPENSATION FROM THOSE PATIENTS WHO NEITHER KNOW NOR HAVE REASON TO KNOW WITHIN THE FOUR-YEAR LIMITATIONS PERIOD THAT THEY HAVE BEEN INJURED BY THE CONDUCT OF PHYSICIANS AND HOSPITALS.

The due process clause prohibits the taking of a property interest without due process of law. What constitutes a property

interest for this purpose is, according to this Court, a question of state law. *Goldberg* v. *Kelly*, 397 U. S. 254 (1970); *Board of Regents* v. *Roth*, 408 U. S. 564 (1972). In Illinois, a cause of action for personal injuries is a vested property right, *Wangler Boiler and Sheet Metal Works* v. *Industrial Comm'r*, 287 Ill. 118, 121 (1919), which is capable of being assigned and inherited. Ill. Rev. Stat. ch. 3, Sec. 494. This right is also protected by Article 1, Section 2 of the Illinois Constitution. Thus, a medical malpractice cause of action against physicians and hospitals is a property interest for due process purposes.

Section 22.1 impermissibly operates to deprive patients of this property interest. Patients who neither know nor have reason to know within four years of injuries to them caused by the conduct of physicians and hospitals, lose their cause of action for damages *without ever having known that they had it*. This is inconsistent with basic notions of fairness underlying procedural due process.

Long ago this Court made the same point in a case involving the constitutionality of another state statute of limitations. In *Wilson* v. *Iseminger*, 185 U. S. 55 (1902), this Court upheld the challenged limitations period because it provided a reasonable time for affected parties to protect their legal interest. However, it stated:

> "[A]ll statutes of limitations must proceed on the idea that the party has full opportunity afforded him to try his right in the courts. A statute could not bar the existing rights of claimants without affording this opportunity; if it should attempt to do so, it would not be a statute of limitations, whatever might be the purport of its provisions. It is essential that such statutes allow a reasonable time . . ." *Id.* at 62.

See also Lamb v. *Powder River Livestock Co.*, 132 F. 434 (8th Cir. 1904) which held unconstitutional on procedural due process grounds a three month Colorado statute of limitations for judgments received outside the state for causes of action accruing more than six years earlier.

This due process contention, it must be emphasized, does not attack every limitations period, but only that of Section 22.1 and comparable statutes. Medical malpractice injuries are unique because, as noted earlier, such injuries may develop gradually, or the challenged medical misdiagnosis itself may prevent discovery within four years, or the injury may by its very nature only be discoverable through an expensive and dangerous operation or series of tests. For these reasons, a short statute of limitations protecting physicians and hospitals is especially vulnerable to a due process challenge.

IV.

SECTION 22.1 OF THE ILLINOIS LIMITATIONS ACT VIOLATES THE DUE PROCESS CLAUSE BECAUSE IT IMPERMISSIBLY DESTROYS THE RIGHT OF ACCESS TO THE COURTS OF PATIENTS INJURED BY THE CONDUCT OF PHYSICIANS AND HOSPITALS EVEN WHEN THOSE PATIENTS NEITHER KNOW NOR HAVE REASON TO KNOW OF SUCH INJURY WITHIN THE FOUR YEAR LIMITATIONS PERIOD.

This Court's decisions establish that there exists a right of access to the courts based upon the due process clause. *Boddie* v. *Connecticut,* 401 U. S. 371 (1971); *Bounds* v. *Smith,* 430 U. S. 817 (1917). In *Boddie,* the Court asserted as a settled principle:

> "[D]ue process requires, at a minimum, that absent a countervailing state interest of overriding significance, persons forced to settled their claim of right and duty through the judicial process *must be given a meaningful opportunity to be heard.*" (Emphasis added)

In cases like the present one, patients injured by the conduct of physicians and hospitals typically have no choice but to litigate. However, where such patients neither know, have reason to know, nor can reasonably discover within four years that

they have been injured by the conduct of physicians and hospitals, Section 22.1 acts to deny them a "meaningful opportunity to be heard." Furthermore, what distinguishes other statutes of limitation from Section 22.1 for right of access purposes is the absence of "a countervailing state interest of overriding significance" to justify the infringement of this right. Here, the state interests in repose and avoidance of stale claims cannot be considered of overriding signficance because relatively few claims will be barred by Section 22.1. Thus, the due process clause has been violated.

CONCLUSION

For these reasons, this Court should note probable jurisdiction of this appeal.

Respectfully submitted,

LEONARD M. RING
SHELDON H. NAHMOD
LEONARD M. RING
& ASSOCIATES
111 West Washington Street
Chicago, Illinois 60602
(312) 332-1765
Attorneys for Appellant

APPENDIX A

(No. 50880.–Judgment affirmed.)
(Nos. 50980, 50981.–Appellate court reversed;
circuit court affirmed.)

THOMAS ANDERSON *et al.*, Appellants, v. WILLIAM WAGNER, Appellee.–CAROL C. WOODWARD, Indiv. and as Adm'r, Appellee, v. BURNHAM CITY HOSPITAL *et al.*, Appellants.

Opinion filed October 2, 1979.–Rehearing denied March 28, 1980.

Appellate citations: *Anderson* v. *Wagner*, 61 Ill. App. 3d 822. *Woodward* v. *Burnham City Hospital*, 60 Ill. App. 3d 285.

MR. JUSTICE RYAN delivered the opinion of the court:

These consolidated cases involve the validity of section 21.1 of the Limitations Act (Ill. Rev. Stat. 1977, ch. 83, par. 22.1), which provides for a special limitation period for medical malpractice actions against physicians and hospitals. One panel of the Fourth District Appellate Court in cause No. 50880, Anderson v. Wagner, held section 21.1 to be constitutional, with one justice dissenting. (61 Ill. App. 3d 822.) Another panel of the appellate court for the same district in cause Nos. 50980 and 50981, Woodward v. Burnham City Hospital, held section 21.1 unconstitutional, with one justice dissenting. (60 Ill. App. 3d 285.) We granted petitions for leave to appeal in both cases and consolidated them for hearing and opinion in this court.

On the date the complaints in these consolidated cases were filed, section 21.1 of the Limitations Act provided:

> "No action for damages for injury or death against any physician or hospital * * * whether based upon tort, or

breach of contract, or otherwise, arising out of patient care shall be brought more than 2 years after the date on which the claimant knew, or through the use of reasonable diligence should have known, or received notice in writing of the existence of the injury or death for which damages are sought in the action, whichever of such date occurs first, but in no event shall such action be brought more than 4 years after the date on which occurred the act or omission or occurrence alleged in such action to have been the cause of such injury or death.

If the person entitled to bring the action is, at the time the cause of action occurred, under the age of 18 years, or insane, or mentally ill, or imprisoned on criminal charges, the period of limitations does not begin to run until the disability is removed." Ill. Rev. Stat. 1977, ch. 83, par. 22.1.

Plaintiffs Thomas and Marilyn Anderson filed a complaint in the circuit court of Macon County against defendant William Wagner, M.D., on June 23, 1977, alleging that the defendant had failed to inform the plaintiffs that Marilyn had tested positive for rubella in a first trimester pregnancy test given to her late in 1972. Plaintiffs also allege that defendant failed to inform them of the likelihood of mental retardation in a child born under these circumstances. On May 20, 1973, a child, who later proved to be mentally retarded, was born to plaintiffs, who allege they did not discover the defendant's malpractice until January 26, 1976. The circuit court of Macon County dismissed the complaint on motion of the defendant, holding that section 21.1 barred the action. In an amended complaint filed subsequent to the dismissal, plaintiffs allege that the defendant had fraudulently concealed their cause of action from them, which concealment, they allege, tolled the running of the statute of limitations. The trial court held that the statute was not tolled and dismissed the amended complaint. As noted above, the appellate court, with one justice dissenting, affirmed.

Plaintiffs Charles and Carol Woodward filed suit against defendants Burnham City Hospital and two doctors for malpractice on December 30, 1976, alleging an erroneous diagnosis

of tissue taken from plaintiff, Charles Woodward, on November 27, 1965. As a result of the erroneous diagnosis, massive steroid treatments were administered which, it is alleged, caused Charles Woodward to develop a condition known as steroid myopathy which necessitated the amputation of both legs and caused cataracts. Charles died after the complaint was filed and an amended complaint was filed by Carol Woodward as administrator of the decedent's estate and individually. It is alleged that the malpractice was first discovered in February 1976, when a sample from the preserved tissue taken in the 1965 biopsy was tested by another facility, which test demonstrated that the earlier diagnosis had been incorrect. The circuit court of Champaign County, in response to defendants' motion, dismissed the amended complaint, holding that the actions were barred by section 21.1 of the Limitations Act. As stated earlier, the appellate court, with one judge dissenting, reversed and held section 21.1 unconstitutional.

The plaintiffs contend that section 21.1 is unconstitutional for several reasons. First they say it violates the due process and equal protection clauses of both the Federal and State constitutions. The plaintiffs' primary contention is, however, that section 21.1 violates article IV, section 13, of the Illinois Constitution of 1970 in that it is special legislation because it (1) sets medical malpractice apart from all other professional malpractice and (2) confers a special privilege upon only two classes of medical health providers, physicians and hospitals. Before considering these arguments, a survey of recent legislative enactments and judicial decisions relating to medical malpractice will be helpful.

I

It is generally agreed that in the early 1970's what has been termed a medical malpractice insurance crisis existed in most jurisdictions in this country. The crisis resulted from the increasing reluctance of insurance companies to write medical mal-

practice insurance policies and the dramatic rise in premiums demanded by those companies which continued to issue policies. The difficulty in obtaining insurance at reasonable rates forced many health-care providers to curtail or cease to render their services. The legislative response to this crisis sought to reduce the cost of medical malpractice insurance and to insure its continued availability to the providers of health care. By October 1975, 39 States had commissioned studies of the medical malpractice problem and 22 States had revised civil practice laws and rules in an attempt to remedy the problem. Redish, *Legislative Response to the Medical Malpractice Insurance Crisis: Constitutional Implications,* 55 Tex. L. Rev. 759, 761 n. 14 (1977); see generally American Bar Association, Report of the Commission on Medical Professional Liability (1977); United States Department of Health, Education and Welfare Publication No. (OS) 73-88, Medical Malpractice: Report of the Secretary's Commission on Medical Malpractice (1973); Illinois Insurance Laws Study Commission, Final Report to the Governor and 79th General Assembly 47-60 (1975) (medical malpractice).

Legislative efforts dealing with the malpractice crisis included a variety of changes in tort law principles. In many instances direct limits were placed on the amount of recovery. The use of screening panels and arbitration was broadly recommended and followed, and certain procedural changes such as altering the statute of limitations were made. (See Medical Malpractice: The Duke L. J. Symp. 241-92 (1977); Comment, *Recent Medical Malpractice Legislation—A First Checkup,* 50 Tul. L. Rev. 655 (1976).) The Illinois General Assembly, in its effort to meet the crisis, adopted "An Act to revise the law in relation to medical malpractice" (Pub. Act 79-960, approved September 12, 1975, effective November 11, 1975). This act, in addition to amending section 2.1 of the Limitations Act, also created a medical review panel (Ill. Rev. Stat. 1975, ch. 110, par. 58.2 through 58.10) and limited the maximum amount of

recovery in medical malpractice actions (Ill. Rev. Stat. 1975, ch. 70, par. 101).

This court, in *Wright* v. *Central Du Page Hospital Association* (1976), 63 Ill. 2d 313, was one of the first State courts of final review to pass on the validity of a legislature's response to the malpractice crisis. In *Wright* this court held invalid the limitation on the amount of recovery and the provision relating to a medical review panel. That part of the new act amending the Limitations Act was not involved in that case.

It appears that few State courts of final review have followed the holding of *Wright,* though many courts and writers have discussed the case. (*Arneson* v. *Olson* (N. D. 1978), 270 N. W. 2d 125 (limitation on amount of recovery held invalid) (*State ex rel. Cardinal Glennon Memorial Hospital for Children* v. *Gaertner* (Mo. 1979), 583 S. W. 2d 107) (provision for reviewing panel held invalid).) Two lower courts in Ohio have held portions of the Ohio statute invalid. (*Simon* v. *St. Elizabeth Medical Center* (Ohio C. P. Montgomery County 1976), 3 Ohio Op. 3d 164, 355 N. E. 2d 903 (limitation on amount of recovery held invalid); *Grayley* v. *Satayatham* (Ohio C. P. Cuyahoga County 1976), 74 Ohio Op. 2d 316, 343 N. E. 2d 832 (limitation on amount of recovery and provision concerning a panel held invalid).) The Ohio Supreme Court, however, in *Amer* v. *Akron City Hospital* (Ohio 1976), 47 Ohio St. 2d 85, 351 N. E. 2d 479, in a case not directly involving the validity of the shortened medical malpractice limitation period, stated that the enactment of such limitations was within the prerogative of the legislature. (*Amer* v. *Akron City Hospital* (Ohio 1976), 47 Ohio St. 2d 85, 91 n. 4, 351 N. E. 2d 479, 484 n. 4.) Also, some trial courts in Tennessee have not applied the statute of that State providing for screening panels, finding that provision to be in violation of the Tennessee Constitution. (See Comment, *Constitutional Challenges to Medical Malpractice Review Boards,* 46 Tenn. L. Rev. 607, 632-44 (1979).) Recently the Florida Supreme Court, in two cases not yet reported, held

unconstitutional the provisions of that State's malpractice statute which provided for screening panels. (6 Nat'l L. J. 3 (Mar. 17, 1980).) In addition to these cases holding medical malpractice legislation invalid, the Supreme Court of Idaho, in *Jones* v. *State Board of Medicine* (1976), 97 Idaho 859, 555 P. 2d 399, reached a result which cannot be classified as sustaining or holding invalid the medical malpractice statute of that State. While it found that the Idaho act did not deny the plaintiff access to the courts, it nonetheless remanded the case for factual findings on a question of classification.

On the other hand, an overwhelming majority of courts have recognized the unique nature of medical malpractice problems and have upheld general medical malpractice statutes against numerous constitutional attacks. Many of the cases cited from other jurisdictions have either attempted to distinguish *Wright*, or have refused to follow it. (*Woods* v. *Holy Cross Hospital* (5th Cir. 1979), 591 F. 2d 1164; *Hines* v. *Elkhart General Hospital* (N. D. Ind. 1979), 465 F. Supp. 421; *Eastin* v. *Broomfield* (1977), 116 Ariz. 576, 570 P. 2d 744; *Carter* v. *Sparkman* (Fla. 1976), 335 So. 2d 802; *State ex rel. Schneider* v. *Liggett* (1978), 223 Kan. 610, 576 P. 2d 221; *McGuffey* v. *Hall* (Ky. 1977), 557 S. W. 2d 401 (statute valid but certain limited aspects of it declared void because of State constitutional provisions); *Everett* v. *Goldman* (La. 1978), 359 So. 2d 1256; *Attorney General* v. *Johnson* (1978), 282 Md. 168, 385 A. 2d 57; *Paro* v. *Longwood Hospital* (1977), 373 Mass. 645, 369 N. E. 2d 985; *Prendergast* v. *Nelson* (1977), 199 Neb. 97, 256 N. W. 2d 657; *Comiskey* v. *Arlen* (1976), 55 App. Div. 2d 304, 390 N. Y. S. 2d 122; *Parker* v. *Children's Hospital* (1978), 483 Pa. 106, 394 A. 2d 932; *State ex rel. Strykowski* v. *Wilkie* (1978), 81 Wis. 2d 491, 261 N. W. 2d 434.) *Wright* has also been criticized by the writers. See, *e.g.*, Redish, *Legislative Response to the Medical Malpractice Insurance Crisis: Constitutional Implications*, 55 Tex. L. Rev. 759 (1977); Comment, *Constitutional Challenges*

to Medical Malpractice Review Board, 46 Tenn. L. Rev. 607 (1979); Note, *Medical Malpractice Mediation Panels: A Constitutional Analysis,* 46 Fordham L. Rev. 322 (1977); Note, *Wright* v. *Central Du Page Hospital Association: A Grim Prognosis for Medical Malpractice Review Panels?,* 22 S. D. L. Rev. 461 (1977); Note, *Recent Medical Malpractice Legislation—A First Checkup.* 50 Tul. L. Rev. 655 (1976).

The critics have read the holding in *Wright* too broadly. First, the case did not hold that all statutory provisions creating panels for the review of malpractice claims were unconstitutional. Second, the holding of *Wright* that the limitation on the amount of recovery is invalid is not inconsistent with the position taken by the American Bar Association Commission on Medical Professional Liability that no dollar limit on recoverable damages should be enacted which can operate to deny a plaintiff in a medical malpractice action full compensation for *economic* loss. (American Bar Association, Report of the Commission on Medical Professional Liability 145-46 (1977).) The court noted in *Wright* that, under the act being considered, the very seriously injured, because of the limitation, might be unable to recover even all of his medical expenses. *Wright* v. *Central Du Page Hospital Association* (1976), 63 Ill. 2d 313, 327-28.

II

We now turn to the consideration of the changes that were made in the limitation statutes as a part of the legislative response to the medical malpractice insurance crisis. Prior to that crisis few States had special limitation statutes for medical malpractice cases. Generally, the statutes of limitations applicable to personal injuries were followed, and occasionally, when the action was framed on an implied contract theory, a contract limitation period would be applied. A few States had statutes of limitations applicable to all types of malpractice and a few States had statutes of limitations specifically for medical mal-

practice. D. Harney, Medical Malpractice 247-70 (1973); 1 D. Louisell & H. Williams, Medical Malpractice sec. 13.01 *et seq.* (1977); Lillich, *The Malpractice Statute of Limitations in New York and Other Jurisdictions,* 47 Cornell L. Q. 339 (1962).

Increased use of the "discovery rule," beginning in the late 1960's, dramatically complicated the question of statutes of limitation, particularly in the field of medical malpractice. Under the discovery rule a cause of action accrued when a person learned of his injury or reasonably should have learned of it. With extensive application of the discovery rule to medical malpractice cases, statutes of limitations no longer constituted statutes of repose for a defendant in a malpractice action. By the application of the discovery rule a medical malpractice action was not deprived of its vitality simply by the passage of the statutory period. (As to the effect of the discovery rule on the statute of limitations in malpractice cases, see generally, Letvin, *In Search of the Spirit of Lipsey: Discovery of Malpractice and the Statute of Limitations,* 1978 S. I. U. L. J. 345; Scott, *For Whom The Time Tolls—Time of Discovery and the Statute of Limitation,* 64 Ill. B. J. 326 (1976); Note, *The Evolution of Illinois Tort Statutes of Limitation: Where Are We Going and Why?* 53 Chi.-Kent L. Rev. 673 (1977); Comment, *The Time of Discovery Rule and the Qualified Privilege Defense for Credit Reporting Agencies in Illinois after World of Fashion* v. *Dun & Bradstreet, Inc.,* 10 J. Mar. J. Prac. & Proc. 359 (1977).)

Before considering other States' responses to the discovery-rule problem in medical malpractice, however, it is appropriate to consider the development of the Illinois statute of limitations as it relates to medical malpractice actions. In Illinois, prior to 1965, actions involving medical malpractice were governed by the general provisions of the Limitations Act. If the action was one for personal injury, the 2-year limitation period of section 14 of the Act (Ill. Rev. Stat. 1963, ch. 83, par. 15) was applied. In 1964 in *Mosby* v. *Michael Reese Hospital* (1964), 49 Ill. App. 2d 336, the plaintiff alleged that a surgical needle had been

left in her body but that she did not discover this fact until 4 years later when she had a second operation. The trial court, relying on the 2-year statute of limitations, dismissed the plaintiff's complaint. The appellate court, although recognizing the wide application of the discovery rule in other areas, nonetheless affirmed the trial court. However, the appellate court expressed dissatisfaction with the result. At the next session of the General Assembly, section 21.1 was added to the Limitations Act (Ill. Rev. Stat. 1965, ch. 83, par. 22.1), providing in substance that where a foreign object has been introduced into a person's body and was negligently permitted to remain there the period of time within which an action must be brought would not begin to run until the person knew or should have known of this fact, with an outside 10-year limitation following the treatment or operation. Other than cases involving foreign objects, the 2-year provision of section 14 (Ill. Rev. Stat. 1965, ch. 83, par. 15) still applied. In 1970 in *Lipsey* v. *Michael Reese Hospital* (1970), 46 Ill. 2d 32, this court applied the discovery rule to a medical malpractice case not involving a foreign object left in the patient's body and held that the cause of action did not accrue until the injured person learned of the injury or should have learned of it. Thus, after *Lipsey*, if a person had been injured by having a foreign object negligently left in his body, the maximum time within which a complaint could be filed was 10 years. Whereas, if the negligent act involved faulty diagnosis or a negligent act other than leaving a foreign object in the body, the cause of action did not arise until the patient learned of the injury or should have learned of it regardless of how long after the negligent act that may have been. Thus in 1975 the General Assembly, when it enacted Public Act 79—960, part of which was held unconstitutional in *Wright*, was faced with this discrepancy and as part of Public Act 79—960 amended section 21.1 of the Limitations Act by adding to its previous provisions concerning a foreign object a provision limiting the time within which other malpractice

actions may be brought to 2 years. However, the statute further provided an outside time limit of 5 years for bringing this type of action in cases where the discovery rule was applicable. In 1976 section 21.1 was again amended deleting the special provisions concerning foreign objects left in the body and providing that all malpractice actions against physicians and hospitals arising out of patient care shall not be brought more than 2 years after the claimant knew or should have known of the existence of the injury but in no event more than 4 years after the date on which occurred the last act or omission alleged to have been the cause of such injury.

The discovery rule was thought to have played a significant role in the medical malpractice crisis. Because it created what came to be called the "long tail" of liability, the discovery rule reduced an insurance company's ability to predict future liabilities. (See Comment, *"Claims Made" Dilemma in Professional Liability Insurance,* 22 U. C. L. A. L. Rev. 925 (1975).) Responding to these problems, various State and national commissions recommended placing an outside limit on the discovery rule in medical malpractice cases. See, *e.g.,* American Bar Association, Report of the Commission on Medical Professional Liability 140-43 (1977); Medical Injury Insurance Reparations Commission, Report and Recommendation to Governor Dan Walker and Members of the 79th General Assembly (Ill. 1976); Medical Malpractice: The Duke L. J. Symp. 253-54 (1977).

This interest in the discovery rule prompted a substantial number of States to enact limitation statutes placing an outside limit on the applicability of the discovery rule in medical malpractice cases. The various statutes differ in both length of time within which suit must be filed and the types of medical personnel or entities affected by the statute. A number of statutes apply to all "health care providers," comprehensively covering all medical malpractice actions. (Ala. Code 6—5—480 (1975) (4 Years); Ariz. Rev. Stat. sec. 12—564 (1978 Supp.) (3 years);

Cal. Civ. Proc. Code sec. 340.5 (Deering 1979 Supp.) (3 years); Del. Code tit. 18 sec. 6856 (1978 Supp.) (3 years); Fla. Stat. Ann. sec. 95.11 (West 1979 Supp.) (7 years); Ga. Code Ann. secs. 3—1102, 3—1103 (1978 Supp.) (2 years); Ind. Code Ann. secs. 16—9.5—3—1, 16—9.5—3-2 (Burns Supp. 1978) (2 years); Kan. Civ. Proc. Stat. Ann. sec. 60—513 (Vernon 1976) (4 years); Md. Cts. & Jud. Proc. Code Ann. sec. 5—109 (1978 Supp.) (5 years); Nev. Rev. Stat. sec. 41A.097 (1977) (4 years); N. H. Rev. Stat. Ann. sec. 507—C:4 (1977 Supp.) (8 years); N. M. Stat. Ann. sec. 41—5—13 (1978) (3 years); N. Y. Civ. Prac. Law sec. 214—a (McKinney 1978-79 Supp.) (2 years, 6 months); Okla. Stat. Ann. tit. 76, sec. 18 (West 1978-79 Supp.) (only economic expenses allowed after 3 years); Or. Rev. Stat. sec. 12.110 (1977) (5 years); S. C. Code sec. 15—3—545 (1978 Supp.) (6 years); Tenn. Code Ann. sec. 23—3415 (1978 Supp.) (3 years); Tex. Rev. Civ. Stat. Ann. art. 4590i (Vernon 1978-79 Supp.) (2 years); Vt. Stat. Ann. tit. 12, sec. 521 (1978 Supp.) (7 years).) Other statutes attempt to enumerate specific groups of medical personnel or facilities; although not applying to all "health care providers" or health facilities, they, nonetheless, cover a broad spectrum. (Colo. Rev. Stat. sec. 13—80—105 (1978 Supp.) (3 years); Haw. Rev. Stat. sec. 657—7.3 (1978 Supp.) (6 years); Iowa Code Ann. sec. 614.1 (1979-80 Supp.) (6 years); Mich. Comp. Laws Ann. sec. 600.5838 (1979-80 Supp.) (action accrues when alleged tortfeasor ceases treating plaintiff, regardless of time of discovery); Mo. Ann. Stat. sec. 516.105 (1979 Supp.) (10 years); Mont. Rev. Codes Ann. sec. 93—2624 (1977 Supp.) (5 years); S. D. Comp. Laws Ann. sec. 15—2—14.1 (1978 Supp.) (2 years); Utah Code Ann. sec. 78—12—28 (1975 Supp.) (10 years); Wash. Rev. Code Ann. sec. 4.16.350 (1978 Supp.) (8 years).) However, another group of statutes provides protection to a very limited group of medical personnel or facilities and usually excludes nurses and a substantial body of medical personnel and health-care facilities that could be

involved in malpractice litigation. The Illinois statute falls into this group. (Conn. Gen. Stat. Ann. sec. 52—584 (West 1979) (3 years); Ky. Rev. Stat. Ann. sec. 413.140 (Baldwin 1978) (5 years); La Rev. Stat. Ann. art. 9:5628 (1977 Supp.) (3 years); N. D. Cent. Code sec. 28—01—18 (1977 Supp.) (6 years); Ohio Rev. Code Ann. sec. 2305.11 (Baldwin 1978) (4 years).) Some States have previously had medical malpractice limitation statutes which applied only to a limited group and have substantially broadened the application of these statutes. (Compare the Colorado statute above to the statute involved in *McCarty* v. *Goldstein* (1962), 151 Colo. 154, 376 P. 2d 691.) Two States have statutes which protect against claims for all types of professional malpractice. (See Neb. Rev. Stat. sec. 25—222 (1975) (10 years); N. C. Gen. Stat. sec. 1—15 (1977 Supp.) (4 years).) We do not suggest that these statutes represent the total legislative activity in this area. They do show, however, that a substantial majority of the States have felt that the discovery rule should be limited by prescribing a maximum time within which a malpractice action must be commenced regardless of when the injury is discovered.

The Illinois malpractice limitation statute—as it now stands in relation to the time within which actions must be filed—generally follows the time limitation specified in the statutes of other States. However, as noted above, there is a wide variance as to the classes of health-care providers who are covered by the statutes. Our statute falls within the group which does not extend the protection of the statute to all classes of health-care providers who could be the subject of medical malpractice actions. Protection is afforded by our statute only to *physicians and hospitals.*

The various limitation statutes of the other States relating to malpractice have been challenged on a variety of constitutional grounds including equal protection, due process and special legislation. All of the cases that our research found have sustained the validity of the statutes. Whether the statute is

broad and covers all malpractice actions (*Taylor* v. *Karrer* (1976), 196 Neb. 581, 244 N. W. 2d 201), or applies to all types of medical malpractice or all groups of health-care providers (*Landgraff* v. *Wagner* (1976), 26 Ariz. App. 49, 546 P. 2d 26; *Harrison* v. *Schrader* (Tenn. 1978), 569 S. W. 2d 822; *Duffy* v. *King Chiropractic Clinic* (1977), 17 Wash. App. 693, 565 P. 2d 435: *Chaffin* v. *Nicosia* (1974), 261 Ind. 698, 310 N. E. 2d 867), or whether the statute applies only to limited and specific groups of those who provided health care (*Sellers* v. *Edwards* (1972), 289 Ala. 2, 265 S. 2d 438; *McCarty* v. *Goldstein* (1962), 151 Colo. 154, 376 P. 2d 691; *Laughlin* v. *Forgrave* (Mo. 1968), 432 S. W. 2d 308), the statute has been consistently upheld against the charge that the classifications have been discriminatory or unreasonable and constituted a denial of equal protection or constituted special legislation in favor of a class protected. The reasoning of these cases can be summarized by the language of this court in *Hamilton Corp.* v. *Alexander* (1972), 53 Ill. 2d 175, 179:

> "The equal-protection clause does not prevent a State from adjusting its legislation to differences in situations. A statute effecting the classifications of persons or objects is not unconstitutional merely because it affects one class and not another, provided that it affects all members of the same class alike; so long as the classification is not arbitrary and is founded upon some substantial difference in circumstances or conditions properly related to the classification."

(We will more particularly discuss the propriety of the classifications in our statute below when we consider the plaintiffs' arguments concerning special legislation.)

The plaintiffs also contend, in an unarticulated due process argument, that under section 21.1 it is possible that a person's cause of action may be barred by the 4-year-maximum time limit before he learns of his injury. This problem is not directly involved in these cases. However, in *Laughlin* v. *Forgrave* (Mo.

1968), 432 S. W. 2d 308, *Owen* v. *Wilson* (1976), 260 Ark. 21, 537 S. W. 2d 543, and *Landgraff* v. *Wagner* (Ariz. App. 1976), 546 P. 2d 26, the statutes had run before the plaintiffs became aware of their injuries. In those cases the validity of the statutes was challenged as constituting a violation of the plaintiffs' right to due process of law. The courts in those cases noted that the period provided in the statutes was a reasonable time within which to require a complaint to be filed. The Supreme Court of Arkansas in *Owen* v. *Wilson* stated:

> "Any statute of limitations will eventually operate to bar a remedy and the time within which a claim should be asserted is a matter of public policy, the determination of which lies almost exclusively in the legislative domain, and the decision of the General Assembly in that regard will not be interfered with by the courts in the absence of palpable error in the exercise of the legislative judgment." (*Owen* v. *Wilson* (1976), 260 Ark. 21, 24-25, 537 S. W. 2d 543, 545.)

The court held that a claimant is not denied due process of law where a reasonable period of limitation has barred the claim without awareness by the claimant that he has been injured. Also, in *Dunn* v. *Felt* (Del. 1977), 379 A. 2d 1140, the statute of limitations had run prior to the plaintiff's discovery of his injury. The statute was challenged as being in violation of the Delaware Constitution; however, the court sustained the validity of the act, stating:

> "The authority of the General Assembly in enacting statutes of limitation is quite broad and limited only by a rule of reason. [Citations.] I cannot say that the 3 year limitation found in 18 Del. C. section 6856 is unreasonable." *Dunn* v. *Felt* (Del. 1977), 379 A. 2d 1140, 1141.

Although such a result—a cause of action barred before its discovery—seems harsh and unfair, the reasonableness of the statute must be judged in light of the circumstances confronting the legislature and the end which it sought to accomplish. We have noted above that various reports, commissions, and authors

recommended that the "long tail" exposure to malpractice claims brought about by the discovery rule be curtailed by placing an outer time limit within which a malpractice action must be commenced. The 4-year limit of our present statute follows the recommendations of the Medical Injury Reparations Commission contained in its report to the Governor and the 79th General Assembly cited above. This recommendation was made following extensive hearings by the Commission. Our 4-year time limit is also within the general area of limits that had been set by other States. Some are shorter than ours, and some are longer. It has not been demonstrated that the legislative action in establishing the 4-year outer limit within which to file a complaint for medical malpractice is unreasonable. We thus find no due process violation.

III

We turn now to the main thrust of the plaintiffs' argument. The appellate court in one of our cases, *Woodward* v. *Burnham City Hospital,* held that section 21.1 of the Limitations Act constituted special legislation in violation of section 13 of article IV of the Illinois Constitution of 1970. That section of our constitution provides:

> "The General Assembly shall pass no special or local law when a general law is or can be made applicable. Whether a general law is or can be made applicable shall be a matter for judicial determination."

The court held that the act conferred a special benefit upon physicians and hospitals while denying it to all other groups of health-care providers. This, the court held, was unfair, unjust and arbitrary and constituted special legislation in violation of section 13 of article IV of the Constitution of 1970.

The history of the special legislation prohibition of section 22 of article IV of the Constitution of 1870 is exhaustively set forth in G. Braden & R. Cohn, The Illinois Constitution: An Annotated and Comparative Analysis 203-26 (1969). Since this book

was prepared for the 1970 Illinois Constitution Study Commission, its analysis is most helpful. Section 22 once contained a long list of specific prohibitions, the original purposes of which were lost sight of long ago. The 1870 Constitution, however, contained no equal protection clause and the authors note at page 221 that the last enumerated prohibition, which concerned the granting of special privileges, came to be used by the courts as Illinois' version of the fourteenth amendment's equal protection clause. (See also, *Schuman* v. *Chicago Transit Authority* (1950), 407 Ill. 313, 317.) Authors Braden and Cohn recommended omitting from the draft of any new constitution adopted by the 1970 constitutional convention the list of specific prohibitions of special and local laws that had been in the 1870 Constitution. They also recommended including in the new constitution an equal protection clause. To support their recommendation, the authors pointed out the difference between "real" special legislation, such as that specifically prohibited in the prior constitution which had ceased to be a problem, and nonreal special legislation. Nonreal special legislation was simply general legislation challenged on equal protection grounds. They felt that, though the legislature no longer attempted to enact "real" special legislation, the prohibition against the enactment of special legislation should be retained in the constitution in general terms to guard against any attempt to do so. (G. Braden & R. Cohn, The Illinois Constitution: An Annotated and Comparative Analysis 226 (1969).) Braden and Cohn also noted that section 22 of article IV of the 1870 Constitution contained, just after the specific prohibitions, a catch-all statement: "In all other cases where a general law can be made applicable no special law shall be enacted." The authors stated that this provision had been construed as vesting in the legislature and not the courts the authority to say if a general law was applicable. (G. Braden & R. Cohn, The Illinois Constitution: An Annotated and Comparative Analysis 222 (1969). They suggested that with the inclusion in a new constitution of a general prohibition against special legislation there should also be included a provi-

sion authorizing judicial control over a legislature bent on evading the Constitution's provision. Finally, it was suggested that the provision of the model State constitution covering special legislation would accomplish these suggested ends. The drafters of the 1970 Illinois Constitution closely followed Braden's and Cohn's advice. Section 13 of article IV of the 1970 Constitution is almost identical to section 4.11 of article IV of the model State constitution. G. Braden & R. Cohn, The Illinois Constitution: An Annotated and Comparative Analysis 224, 225 (1969).

In *Bridgewater* v. *Hotz* (1972), 51 Ill. 2d 103, the court, in construing section 13 of article IV of the Constitution of 1970, pointed out that the new constitution rejected the previous rule allowing the legislature to determine whether a general law could be made applicable. This court stated, however, that though the scope of judicial review of legislation is enlarged to that extent, section 13 of article IV requires no change in the definition of what is "general and uniform," "special," or "local." *Bridgewater* then applied traditional equal protection tests, tests which this court had used prior to the 1970 Constitution. If there is a reasonable basis for differentiating between the class to which the law is applicable and the class to which it is not, the General Assembly may constitutionally classify persons and objects for the purpose of legislative regulation and control. Furthermore, if the classification bears a reasonable and proper relation to the purposes of the act and the evil it seeks to remedy, it does not violate the constitutional proscription on special or local laws. "Whether the course chosen is wise or whether it is the best means to achieve the desired result it is not a proper subject of judicial inquiry." *Bridgewater* v. *Hotz* (1972), 51 Ill. 2d 103, 111.

Subsequent to *Bridgewater,* this court has continued to evaluate the validity of legislative classifications by the above tests. In addition the court has applied these tests interchangeably, whether the court had under consideration an equal protection question (*Fujimura* v. *Chicago Transit Authority* (1977), 67

Ill. 2d 506, 512; *Hamilton Corp.* v. *Alexander* (1972), 53 Ill. 2d 175, 179), or a special legislation challenge (*Kobylanski* v. *Chicago Board of Education* (1976), 63 Ill. 2d 165). In fact, in *S. Bloom, Inc.* v. *Mahin* (1975), 61 Ill. 2d 70, 77, this court stated that the Illinois Constitution of 1870 contained no equal protection clause, "but similar standards are applied to determine violations of the special legislation provision * * *." Thus, though section 13 of article IV of the Constitution of 1970 gives the court enlarged judicial review in the narrow area of "real" special legislation, traditional deference is given to legislative classification in this area as well as when the court is considering equal protection questions in the guise of special legislation challenges. See generally Turkington, *Equal Protection of the Laws in Illinois,* 25 De Paul L. Rev. 385, 410-22 (1976); Whalen & Wolff, *Constitutional Law: The Prudence of Judicial Restraint Under the New Illinois Constitution,* 22 De Paul L. Rev. 63, 77-79 (1972); Comment, *Medical Malpractice Statute of Limitations as Special Legislation,* 55 Chi.-Kent L. Rev. 519 (1979).

The plaintiffs in this action rely heavily upon several of our frequently discussed special legislation cases. (*Grace* v. *Howlett* (1972), 51 Ill. 2d 478; *Skinner* v. *Anderson* (1967), 38 Ill. 2d 455 (this case will be discussed at length below); *Harvey* v. *Clyde Park Dist.* (1964), 32 Ill. 2d 60.) In fact, however, these cases illustrate the equal protection classification test outlined above. Though these cases were phrased in special-legislation language, they clearly applied an equal protection standard. Although the statutes in each case operated uniformly on all members of a class, no sound basis or rational reason existed for treating that particular class as separate from other classes for the purposes of legislation. In the cases now before us there clearly is a sound and rational basis for the classification at issue.

Plaintiffs in the Woodward case first contend that the limitations statute violates section 13 of article IV because it sets medical malpractice actions apart from other professional mal-

practice actions. This contention has no merit. When it enacted this statute, the legislature was directly addressing itself to a medical malpractice problem. Its action was supported by recommendations of numerous commissions and authors that the "long tail" of the discovery rule be curtailed by adding to the limitation period an outer time limit within which medical malpractice action must be filed. Our legislature's action is also supported by reference to many other jurisdictions. The legislatures of many other States have enacted similar limitations on medical malpractice actions. These statutes have been upheld uniformly by courts of review. These statutes and these cases have been set out above at length. Thus we must conclude that there was a reasonable attempt to remedy what the legislature perceived to be a medical malpractice insurance crisis. Whether the course was wise or the best means of accomplishing the result desired is a matter for legislative determination. *Bridgewater v. Hotz* (1972), 51 Ill. 2d 103.

A more difficult question concerning the legislative classification does exist, however: Is there a reasonable basis for differentiating between the class to whom the statute applies (physicians and hospitals) and other groups of providers of health care to whom this statute does not apply? We have noted earlier in this opinion that there is a wide variance in the statutes of the different States as to the health-care providers covered by their statute of limitations. Our statute is one of the more narrow. However, whether the statute covers all medical personnel or particular groups within the broader class, the courts in the cases cited above have upheld the classifications of the legislatures.

The crisis which confronted the legislatures in the mid-1970's concerned the rapid increase in the premiums for medical malpractice insurance by some companies and the withdrawal of other insurance companies from the medical malpractice insurance field. The object of the legislation was to insure the continued availability of this type of insurance to those who were

affected by the crisis and thus to insure the continuation of health services from these affected groups. Much empirical data has established that physicians and hospitals must be set apart from other members of the health-care class insofar as medical malpractice insurance is concerned. The National Association of Insurance Commissioners, an association of insurance departments of the various States, in 1977 published "NAIC Malpractice Claims," which reflects that claims against physicians and surgeons constituted 59% of all claims paid by count and 73% of the total amount of all claims that were paid. Claims against hospitals composed 36% of all claims paid by count and 25% by amount. Thus physicians and hospitals together accounted for 95% of the total number of medical malpratice claims and 98% of the dollar amount of those claims paid. In Report and Recommendation of the Medical Injury Insurance Reparations Commission to Governor Dan Walker and Members of the 79th General Assembly (Ill. 1976), a special legislative commission report sets out a table compiled by the National Association of Insurance Commissioners reflecting claims closed after July 1, 1975, showing that of a total of 3,298 claims, 1,815 were against physicians and surgeons and 1,288 were against hospitals. (Report at 20.) In a section of the above report headed "The Impact of Malpractice Claims on the Insurance Mechanism and Health Care Delivery System," the report states in summary:

> "At the present time, the malpractice crisis has not reached these other health care providers to the same degree that it has reached hospitals and physicians, although the self-employed podiatrist seems to be approaching the problem." Report at 29.

What is more, much constitutionally valid classification already exists in the medical field, based on the obvious difference between different types of medical professionals. The dissenting judge in the appellate court decision in *Woodward* v. *Burnham City Hospital* (1978), 60 Ill. App. 3d 285, 289,

pointed out that the legislature had already classified various groups of medical personnel and hospitals and institutions for purposes of licensing and regulation. Recently the United States Supreme Court sustained an extreme example of classification in this field. In *Friedman* v. *Rogers* (1979), 440 U. S. 1, 59 L. Ed. 2d 100, 99 S. Ct. 887, the court upheld the Texas legislature's right to differentiate between two different groups of optometrists, each group having identical training, education, and licensing standards. Both groups practiced the profession; however, one group was self-employed and the other was not. The legislature had given one group of optometrists special preference in representation on a board. The court concluded that the classification reasonably related to the legitimate purpose of the Act.

We conclude that there was a reasonable basis for differentiating between physicians and hospitals and other members of the general class of health-care providers for the purpose of this particular legislation. The General Assembly in responding to the medical malpractice insurance crisis drew the statute very narrowly and encompassed within the classification to whom the statute applied only those segments of the health-care providers most acutely affected by the crisis. (In effect, our limited statute thus preserves far more of the discovery rule than the comprehensive health-care-provider statutes cited earlier.) " 'If the law presumably hits the evil where it is most felt, it is not to be overthrown merely because there are other instances to which it might have been applied.' [Citations.]" (*Youhas* v. *Ice* (1974), 56 Ill. 2d 497, 502.) "We would also remark that so far as legislative classification is concerned, it has been recognized that evils in the same field may be of different dimensions and reform may take one step at a time. The legislature may address itself to one stage of a problem and not take action at the same time as to other phases." *Illinois Coal Operators Association* v. *Pollution Control Board* (1974), 59 Ill. 2d 305, 312-15.

The appellate court in *Woodward* v. *Burnham City Hospital* found *Skinner* v. *Anderson* (1967), 38 Ill. 2d 455, controlling,

and the plaintiffs now in this court rely heavily on that decision. In *Skinner* v. *Anderson* this court held invalid section 29 of the Limitations Act, which was added by an amendment in 1963. (Ill. Rev. Stat. 1965, ch. 83, par. 24(f).) The amendment purported to immunize architects and contractors from liability upon causes of action that did not accrue within 4 years after the architect or contractor performed his services. This court held that the statute granted to architects and contractors a special and exclusive immunity and thus constituted a violation of section 22 of article IV of the Constitution of 1870. The court pointed out that of all of those whose negligence in connection with the construction of a structure might result in injury to a person that statute singles out only the architect and contractor and grants them immunity. This court stated, however, that though section 22 of article IV of the Constitution of 1870 did not prohibit legislative classification, it did require that the legislation be reasonably related to the legislative purpose. Where that relationship is nonexistent the statute contravenes the constitutional prohibition. The court also stated:

> " 'That the statute operates uniformly upon all members of a class created as the beneficiaries of the act is not the sole test to be applied, but in order to avoid the constitutional inhibition * * * it must also appear that there is a sound basis, in reason and principle, for regarding the class of individuals as a distinct and separate class for the purpose of the particular legislation.' [Citation.]" (38 Ill. 2d 455, 461.)

We do not agree that *Skinner* v. *Anderson* is controlling. No doubt a general statute of limitations which was not limited in its applicability to only physicians and hospitals but applied to all personnel and institutions administering health care would have achieved whatever end this legislative response to the medical malpractice insurance crisis was seeking to achieve. In fact, a statute of limitations that would apply to all professional malpractice cases would have achieved the result. The sentence in section 13 of article IV of our constitution—Whether a gen-

eral law is or can be made applicable shall be a matter for judicial determination—does not prohibit classification of persons and objects. As noted in *Skinner* v. *Anderson,* however, the classifications must be reasonably related to the legislative purpose and it must appear that there is a sound basis for regarding the class as distinct and separate for the purpose of the legislation. Our analysis of the statute in our earlier discussion of the classification issue compels us to hold that the statute is not defective when judged by the standards of *Skinner* v. *Anderson.*

Our conclusion that *Skinner* v. *Anderson* does not control is emphasized by a recent case. In *Fujimura* v. *Chicago Transit Authority* (1977), 67 Ill. 2d 506, the court upheld the validity of a statute which required that within 6 months from the date of the injury anyone about to commence an action against the Chicago Transit Authority because of the injury must file a statement with the Authority. Statutes regarding similar notice to other governmental units required that the same be given within 1 year. This court, applying the traditional equal protection analysis, found that there was a rational basis for supporting a shorter notice period and statute of limitations for the transit authority.

IV

Having concluded that section 21.1 of the Limitations Act (Ill. Rev. Stat. 1977, ch. 83, par. 22.1) is not special legislation within the proscription of section 13 of article IV of the Constitution of 1970, we turn to several remaining issues in the Anderson case. After the trial court had dismissed plaintiffs Andersons' original complaint, an amended complaint was filed. It is argued that the amended complaint is based on the theory that the defendant had fraudulently concealed his negligent acts from the plaintiffs. Plaintiffs now contend that section 22 of the Limitations Act (Ill. Rev. Stat. 1975, ch. 83, par. 23) tolled the running of the time limitation of section 21.1. Section 22 provides:

> "If a person liable to an action fraudulently conceals the cause of such action from the knowledge of the person

> entitled thereto, the action may be commenced at any time within five years after the person entitled to bring the same discovers that he has such cause of action, and not afterwards."

Although the trial court held that the allegations of fraudulent concealment were sufficient, it nonetheless held that the cause of action was barred by section 21.1.

The complaint alleges that plaintiff Marilyn Anderson was a patient of the defendant from September 1972 through May 1973. The child was born on May 20, 1973. The complaint was filed June 23, 1977. It is alleged that the plaintiffs discovered the acts complained of on January 26, 1976. Applying the 4-year maximum limitation period of the medical malpractice limitation statute (section 21.1) the earliest date on which the action would be barred would be the first part of September 1976, and the latest date would be the last part of May 1977. Thus after the plaintiffs discovered the basis for their cause of action on January 26, 1976, the statute of limitations had not run and would not run for a minimum of 7 months or a maximum of 16 months. If at the time the plaintiff discovers the "fraudulent concealment" a reasonable time remains within the applicable statute of limitations, section 22 of the Limitations Act does not toll the running of the limitation period. (*Skrodzki* v. *Sherman State Bank* (1932), 348 Ill. 403, 407, 409; *Solt* v. *McDowell* (1971), 132 Ill. App. 2d 864, 867.) We cannot say that the trial court erred in holding that plaintiffs' cause of action was barred. It appears that had they exercised diligence after discovery of the alleged fraud their action would not have been barred by the statute.

By discussing section 22 of the Limitations Act we do not hold that it is applicable in medical malpractice cases. That question is not before us. There are, however, uncertainties concerning the applicability of section 22 of the Limitations Act which we need not resolve in this opinion but to which we invite the attention of the General Assembly.

V

The Andersons raise one final issue. Their complaint alleges that Mrs. Anderson was under the care of the defendant from September 1972 through May 1973. There is no specific allegation as to when the rubella test was given, when the fetus became viable, or when any of the defendant's negligent acts occurred. It is specifically alleged that the child was born May 20, 1973, and the plaintiffs have focused on that date as the date of injury. This appears to have been accepted by the defendant and by the trial court. Applying the present 4-year limitation period of section 21.1, the action had to be filed by May 20, 1977. It was not filed until June 23, 1977. However, prior to September 19, 1976, section 21.1 provided that a medical malpractice action had to be filed within 2 years after the discovery of injury but in no event more than 5 years after the date of the act or omission. The Andersons now argue that since they did not discover that they had a cause of action against the defendant until January 26, 1976, they did not have a reasonable time after the effective date of the amendment to section 21.1 within which to file their complaint. They acknowledge that the legislature may shorten the time within which an action must be filed and that the shortened period will apply to existing claims provided a reasonable time remains within which to file the complaint. They now complain the trial court failed to conduct a hearing as to whether a reasonable time had been afforded them within which to bring their action.

The complaint contains no allegation that the Andersons did not have a reasonable time under the 1976 amendment within which to bring their action. They did not request a hearing on this question in the trial court. There is no indication in the order of the court that it did not consider the reasonableness of the time. Accepting the Andersons' argument that the limitation period ran from the birth of the child, the shortened 4-year limitation period did not expire until May 20, 1977, 8

months after September 19, 1976, the effective date of the amendment; 9 months after its adoption on August 20, 1976; and 16 months after they alleged that they learned that they had a claim against the defendant. Under these facts we cannot say that the trial court erred in applying the shortened limitation period of the 1976 amendment to section 21.1.

For the reasons given above, the judgment of the appellate court is affirmed in cause No. 50880, Anderson v. Wagner. As to cause Nos. 50980 and 50981, Woodward v. Burnham City Hospital, the judgment of the appellate court is reversed and the judgment of the circuit court of Champaign County is affirmed.

50880—Judgment affirmed.

50980, 50981—Appellate court reversed; circuit court affirmed.

APPENDIX B

Illinois Supreme Court
Clell L. Woods, Clerk
Supreme Court Building
Springfield, Ill. 62706
(217) 782-2035

March 28, 1980

Leonard M. Ring & Associates
Attorneys at Law
111 W. Washington St., S#1333
Chicago, IL 60602

Nos. 50880—Thomas Anderson, et al., etc., appellants, vs.
50980 William L. Wagner, M. D., et al., etc., appellees.
50981 Appeal, Appellate Court, Fourth District.
Cons.

The Supreme Court today denied the petitions for rehearing in the above entitled cause. Pages 3 and 4 of the opinion were modified upon such denial and a copy of each of said page, as modified, is enclosed.

Very truly yours,

/s/ Clell L. Woods
Clerk of the Supreme Court

APPENDIX C

Circuit Court of Illinois
Sixth Judicial Circuit
Chambers of Creed D. Tucker, Circuit Judge
Urbana, Illinois, Telephone 384-3705, Area Code 217
August 15, 1977

Leonard M. Ring, Esq.
Attorney at Law
111 West Washington Street
Chicago, Illinois 60602
Re: Woodward v. Burnham City Hospital, et al.
No. 76-L-1599

Dear Mr. Ring:

The following docket entry has been made in the above-entitled case this date:

> "Ruling on Motions to Dismiss by all Defendants, heretofore taken under advisement. The Court, having considered the briefs and arguments of the parties, finds there is a presumption that the statutes enacted by the legislature are constitutional and that the legislature has provided for the exceptional nature of cases such as herein considered. Further finding that this court need not determine in this cause the breadth of the terms "physician" and "hospital". Further finding by the court that Section 22.1, Chapter 83, Ill. Rev. Stats., 1975 is constitutional. Further finding by the court the statute of limitations set forth in Section 22.1 is reasonable. Further finding by the court that Plaintiff has not complied with Section 22.1. Case dismissed. Cause stricken. Written Order to be entered."

Yours very truly,

/s/ Creed D. Tucker
Creed D. Tucker
Circuit Judge

CDT/ja

In the Circuit Court of the Sixth Judicial District
Champaign County, Illinois

Charles C. Woodward and
Carol C. Woodward,
Plaintiffs,

vs.

Burnham City Hospital, a corporation,
and George Green and Stan J.
Bobowski,
Defendants.

No. 76-L-1599

ORDER

Upon motions by defendant to dismiss the action on the ground that the action did not commence by the filing of a Complaint within the time required by Section 83, Section 22.1 of Illinois Revised Statutes, Briefs having been considered, arguments heard and the Court being fully advised in the premises;

It Is Hereby Ordered and Adjudged that the action be and is dismissed, cause stricken.

Enter: .....

.....

Judge

State of Illinois
County of Champaign } ss.

In the Circuit Court of the Sixth Judicial Circuit
Champaign County, Illinois

Charles C. Woodward and
Carol C. Woodward,
Plaintiffs,

vs.

Burnham City Hospital, a corporation,
and George Green and Stan J.
Bobowski,
Defendants.

No. 76-L-1599

PLAINTIFFS' RESPONSE TO DEFENDANT BURNHAM CITY HOSPITAL'S MOTION TO DISMISS

Now come the plaintiffs Charles C. Woodward and Carol C. Woodward, by their attorney, Leonard M. Ring, and responding to defendant Burnham City Hospital's Motion to Dismiss, states that defendant's assertion that plaintiffs' claim is barred by the statute of limitations, Ill. Rev. Stat. Ch. 83, § 221 (1975), is incorrect, since said statute is unconstitutional in violation of one or more of the following constitutional provisions:

1. United States Constitution, Amend. XIV, due process clause.
2. United States Constitution, Amend. XIV, equal protection clause.
3. Illinois Constitution of 1970, Article 4, Section 13, special legislation.
4. Illinois Constitution of 1970, Article 1, Section 2, due process.
5. Illinois Constitution of 1970, Article 1, Section 2, equal protection.

6. Illinois Constitution of 1970, Article 1, Section 16, grant of special privilege of immunity.

Wherefore, the plaintiffs, Charles C. Woodward and Carol C. Woodward, pray that the defendant, Burnham City Hospital's Motion to Dismiss be denied.

.....

Leonard M. Ring
Attorney for Plaintiffs

Leonard M. Ring and Associates
111 West Washington Street
Suite 1333
Chicago, Illinois 60602
Phone—(312) 332-1765

State of Illinois }
County of Champaign } ss.

In the Circuit Court of the Sixth Judicial Circuit
Champaign County, Illinois

Charles C. Woodward and
Carol C. Woodward,
Plaintiffs,
vs.
Burnham City Hospital, a corporation,
and George Green and Stan J.
Bobowski,
Defendants.

No. 76 L 1599

PLAINTIFFS' RESPONSE TO DEFENDANT GREEN'S MOTION FOR INVOLUNTARY DISMISSAL

Now come the plaintiffs, Charles C. Woodward and Carol C. Woodward, by their attorney, Leonard M. Ring, and responding to defendant George Green's Motion for Involuntary Dismissal, states that defendant's assertion that plaintiffs' claim is barred by the statute of limitations, Ill. Rev. Stat. Ch. 83, § 221 (1975), is incorrect, since said statute is unconstitutional in violation of one or more of the following constitutional provisions:

1. United States Constitution, Amend. XIV, due process clause.
2. United States Constitution, Amend. XIV, equal protection clause.
3. Illinois Constitution of 1970, Article 4, Section 13, special legislation.
4. Illinois Constitution of 1970, Article 1, Section 2, due process.

5. Illinois Constitution of 1970, Article 1, Section 2, equal protection.
6. Illinois Constitution of 1970, Article 1, Section 16, grant of special privilege or immunity.

Wherefore, the plaintiffs, Charles C. Woodward and Carol C. Woodward, pray that the defendant George Green's Motion for Involuntary Dismissal be denied.

.....

Leonard M. Ring
Attorney for Plaintiffs

Leonard M. Ring and Associates
111 West Washington Street
Suite—1333
Chicago, Illinois 60602
Phone—(312) 332-1765

APPENDIX D

No. 50980

In the
Supreme Court of Illinois

Carol C. Woodward, as Administrator of the Estate of Charles C. Woodward, deceased, and Carol C. Woodward, Individually,

vs. *Appellant*

Burnham City Hospital, a corporation, and George Green and Stan J. Bobowski

Appellees

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES

Notice Is Hereby given that Carol C. Woodward, as Administrator of the Estate of Charles C. Woodward, deceased, and individually, the appellant above named, hereby appeals to the Supreme Court of the United States from the final judgment of the Supreme Court of Illinois entered in this action on October 2, 1979, rehearing denied on March 28, 1980.

This appeal is taken pursuant to 28 U. S. C. Sec. 1257(2).

/s/ Leonard M. Ring
Leonard M. Ring,
Attorney for Appellant,
Carol C. Woodward

Leonard M. Ring & Associates
111 W. Washington St.
Chicago, Illinois 60602
(312) 332-1765

No. 50980

In the
Supreme Court of Illinois

Carol C. Woodward, as Administrator of the Estate of Charles C. Woodward, deceased, and Carol C. Woodward, Individually,

Appellant

vs.

Burnham City Hospital, a corporation, and George Green and Stan J. Bobowski

Appellees

PROOF OF SERVICE OF NOTICE OF APPEAL

Reno, O'Byrne & Kepley
501 W. Church St.
Champaign, Ill. 61820

Thomas Mamer, Haughey & Miller
30 Main Street—Box 967
Champaign, Ill. 61820

Bennett Willoughby & Latshaw
140 S. Water St.
PO Box 1784
Decatur, Ill. 62523

Phillips, Phebus, Tummelson, Ryan
136 W. Main Street
Urbana, Ill. 61801

Anderson, Erickson & Davis
Room 200 Irish-Behnke Bldg.
225 South Main St.
Decatur, Ill. 62523

McLaughlin Kinser & Bryant
135 South LaSalle St.
Chicago, Illinois 60603

Please Take Notice that on the 20th day of June, 1980, we shall file with the Clerk of the Supreme Court of Illinois a Notice of Appeal to the Supreme Court of the United States from the judgment entered in the above entitled cause by the Supreme Court of Illinois on October 2, 1979, petition for rehearing denied on March 28, 1980, a copy of which notice of appeal is hereby attached and served upon you.

/s/ .....

Leonard M. Ring,
Attorney for Appellant
111 W. Washington Street
Chicago, Illinois 60602
(312) 332-1765

State of Illinois }
County of Cook } ss.

The undersigned, after being duly sworn on oath, deposes and says that a copy of the Aforesaid Notice and attached Notice of Appeal was served to the attorneys of record for the defendants at their respective addresses by deposting same in the U. S. mail at 111 W. Washington, Chicago, Illinois, postage prepaid, at 5:00 p.m. on June 19, 1980.

/s/ Helen E. Marada

Subscribed and sworn to before me this 19th day of June, 1980.

/s/ .....

Albena Ruther
Notary Public

(Seal)

Supreme Court, U. S.
FILED
SEP 12 1980
MICHAEL RODAK, JR., CLERK

No. 79-2033

In The

Supreme Court of the United States

OCTOBER TERM, 1979

—o—

CAROL C. WOODWARD, as Administrator of the Estate of CHARLES C. WOODWARD, Deceased, and CAROL C. WOODWARD, Individually,

Appellant,

vs.

BURNHAM CITY HOSPITAL, a corporation, and GEORGE GREEN, and STAN J. BOBOWSKI,

Appellees.

—o—

On Appeal from the Supreme Court of Illinois

—o—

MOTION TO DISMISS OR AFFIRM

—o—

STEPHEN M. O'BYRNE
RENO, O'BYRNE & KEPLEY
501 West Church Street
Champaign, IL 61820
Attorney for Appellee
Burnham City Hospital

COCKLE PRINTING CO., 2311 Douglas St., Omaha 68102

TABLE OF CONTENTS

Pages

Motion to Dismiss 1

Argument 2

Motion to Affirm 3

Argument:

I. Section 22.1 does not restrict any fundamental right requiring the application of either the "strict judicial scrutiny" test or of a "means-scrutiny" test. 3

II. Section 22.1 and the classifications created therein are rationally related to a legitimate state interest. 5

III. Section 22.1 of the Illinois Limitation Act does not improperly restrict any right or cause of action in violation of the due process clause. 8

Conclusion 10

TABLE OF AUTHORITIES

CASES

Adams v. Russell, 229 U. S. 353, 33 S. Ct. 846 (1913) 2

Barry v. Barchi, 441 U. S. —, 99 S. Ct. 2642 (1979) 6

Brown v. Board of Education, 347 U. S. 483, 74 S. Ct. 686 (1954) 4

Chase Securities Corporation v. Donaldson, 325 U. S. 304 (1945) 8, 9

Dandridge v. Williams, 397 U. S. 471 (1970) 8

Dun v. Felt, 379 A. 2d 1140 (Del., 1977) 9

TABLE OF AUTHORITIES—Continued

Pages

Dunn v. St. Francis Hospital, 401 A. 2d 77 (Del., 1979) 9, 10

First National Bank v. Estherville, Iowa, 215 U. S. 341, 30 S. Ct. 152 (1909) 2

Graham v. Richardson, 403 U. S. 365, 91 S. Ct. 1848 (1971) 4

Griswold v. Connecticut, 381 U. S. 479 (1965) 4

Harrison v. Schrader, — Tenn. —, 569 S. W. 2d 822 (1978) 4

Holley v. Lawrence, 318 U. S. 518, 63 S. Ct. 394 (1943) 2

Jones v. State Board of Medicine, 97 Idaho 859, 555 P. 2d 399 (1976) 4

Landgraff v. Wagner, 26 Ariz. App. 49, 546 P. 2d 26 (1976) 9

Lipsey v. Michael Reese Hospital, 46 Ill. 2d 32, 262 N. E. 2d 450 (1970) 6, 7

McCarty v. Goldstein, 376 P. 2d 691 (Col., 1962) 8

New Orleans v. Dukes, 427 U. S. 297, 296 S. Ct. 2513 (1976) 5, 8

Owen v. Wilson, 266 Ark. 21, 24-25, 537 S. W. 2d 543, 545 (1976) 9

San Antonio Independent School District v. Rodriequez, 411 U. S. 1, 93 S. Ct. 1278 (1973) 4

Sellers v. Edwards, 289 Ala. 2, 265 So. 2d 438 (1972) ... 8

TABLE OF AUTHORITIES—Continued

Pages

Shapiro v. Thompson, 394 U. S. 618 (1969) 4

State ex rel. Schneider v. Ligget, 223 Kan. 616, 576 P. 2d 221 (1978) 8

United States v. Kubrick, — U. S. —, 100 S. Ct. 352, 357 (1979) 8

Vance v. Bradley, 440 U. S. —, 99 S. Ct. 939 (1979) 6

Woods v. Holy Cross Hospital, 591 F. 2d 1164 (5th Cir., 1979) 4

Wright v. Central DuPage Hospital Association, 63 Ill. 2d 313, 347 N. E. 2d 736 (1976) 7

STATUTE:

Section 22.1 of the Illinois Limitations Act, being Ill. Rev. Stats., 1976 Supp., Ch. 83, par. 22.1 ..... 2, 3, 4, 6, 7, 8, 10

CONSTITUTION

Article IV, Section 13 of the Illinois Constitution of 1970 2

No. 79-2033

—o—

In The

Supreme Court of the United States

OCTOBER TERM, 1979

—o—

CAROL C. WOODWARD, as Administrator of the Estate of CHARLES C. WOODWARD, Deceased, and CAROL C. WOODWARD, Individually,

Appellant,

vs.

BURNHAM CITY HOSPITAL, a corporation, and GEORGE GREEN, and STAN J. BOBOWSKI,

Appellees.

—o—

On Appeal from the Supreme Court of Illinois

—o—

MOTION TO DISMISS OR AFFIRM

—o—

MOTION TO DISMISS

BURNHAM CITY HOSPITAL, Appellee, moves to dismiss the appeal in the above-entitled cause for the reason that no substantial federal question is involved and that the judgment appealed from rests on an adequate non-federal basis.

—o—

ARGUMENT

The Supreme Court of Illinois reversed a panel of the Appellate Court of the State of Illinois which had found § 22.1 of the Illinois Limitations Act, being Ill. Rev. Stats., 1976, Supp., Ch. 83, par. 22.1, unconstitutional as being violative of Article IV, § 13 of the Illinois Constitution of 1970, prohibiting "special legislation." Section 13 in Article IV of that Constitution provided:

> "The General Assembly shall pass no special or local law when a general law is or can be made applicable. Whether a general law is or can be made applicable shall be a matter for judicial determination."

The issue before the Illinois Supreme Court was whether or not § 22.1 of the Limitations Act was special legislation, and in its ruling the Supreme Court found that it did not violate the State Constitution, but rather was a reasonable exercise of the State's police power.

This Court has held that a sufficient showing has not been made to give this Court jurisdiction over the judgment of a state court where the record merely discloses that a federal question was argued or presented to the state court. The appellant through her jurisdictional statement must demonstrate that a decision of the state court on the federal question is necessary to the determination of the cause and that such question was actually decided or that the judgment appealed from could not have been given without a decision on such federal question. *Adams v. Russell,* 229 U. S. 353, 33 S. Ct. 846 (1913); *First National Bank v. Estherville, Iowa,* 215 U. S. 341, 30 S. Ct. 152 (1909), and *Holley v. Lawrence,* 318 U. S. 518, 63 S. Ct. 394 (1943). This court also held that an appeal from a

state court to the Supreme Court of the United States would be dismissed where the decision appealed from was based upon a non-federal ground adequate to support that decision.

In the cause presently before this Court, the issue facing the Illinois Supreme Court was whether § 22.1 violated the State Constitution's prohibition of "special legislation". The state court found that the statute did not violate that prohibition and a review of the state court's opinion demonstrates that its decision was grounded on this non-federal basis and that the federal questions raised were not necessary to the court's decision.

—o—

MOTION TO AFFIRM

BURNHAM CITY HOSPITAL, Appellee, moves to affirm the decision of the Supreme Court of Illinois. That decision was proper and correct and no substantial federal constitutional questions are involved.

—o—

ARGUMENT

I.

Section 22.1 does not restrict any fundamental right requiring the application of either the "strict judicial scrutiny" test or of a "means-scrutiny" test.

Legislative classification has been subjected to the "strict judicial scrutiny" test for equal protection purposes only when the classification restricted a "fundamental right" or the classifications were based on racial or ethnic distinctions. *See, e. g., Griswold v. Connecticut,* 381 U. S. 479 (1965) (marital right to privacy); *Shapiro v. Thompson,* 394 U. S. 618 (1969) (right to travel); *San Antonio Independent School District v. Rodriequez,* 411 U. S. 1, 93 S. Ct. 1278 (1973) (right to public education); *Brown v. Board of Education,* 347 U. S 483, 74 S. Ct. 686 (1954) (race); *Graham v. Richardson,* 403 U. S. 365, 91 S. Ct. 1848 (1971) (alienage). Contrary to the Appellant's assertion, § 22.1 does not establish a legislative classification restricting either a fundamental right or is it based on racial or ethnic underpinnings. This Court has never held that the right of access to the Courts in civil cases is a fundamental right. Further, such an argument was rejected in the recent case of *Woods v. Holy Cross Hospital,* 591 F. 2d 1164 (5th Cir., 1979).

Appellant in her jurisdictional statement also suggests that the application of a "means-scrutiny" test is proper. While the Appellant cites the Idaho decision of *Jones v. State Board of Medicine,* 97 Idaho 859, 555 P. 2d 399 (1976), it should be noted that this decision represents a minority position with the majority of courts considering malpractice legislation having either denied the existence of such a test or rejected its application in examining statutes such as § 22.1. *See, e. g., Woods v. Holy Cross Hospital,* 591 F. 2d 1164 (5th Cir., 1979); *Harrison v. Schrader,* — Tenn. —, 569 S. W. 2d 822 (1978).

Since § 22.1 is not addressed to any "fundamental right" or based upon a racial or ethnic classification,

neither the "strict scrutiny" test nor Appellant's suggested "means-scrutiny" test are appropriate in examining this statute for equal protection purposes.

II.

Section 22.1 and the classifications created therein are rationally related to a legitimate state interest.

In its recent decision in *New Orleans v. Dukes,* 427 U. S. 297, 296 S. Ct. 2513 (1976), this Court enunciated the current criteria to be used in analyzing legislative classification in light of the equal protection clause, stating:

> "... our decisions presume the constitutionality of the statutory discrimination and require only that the classification challenged be rationally related to a legitimate state interest. States are accorded wide latitude in the regulation of their local economies under their police powers, and rational distinctions may be made with substantially less than mathematical exactitude. Legislatures may implement their program step by step, *Katzenback v. Morgan,* 384 U. S. 641 (1966), in such economic areas, adopting regulations that only partially ameloriate a perceived evil and deferring complete elimination of the evil to future regulations. *See, e. g., Williamson v. Lee Optical Co.,* 348 U. S. 483, 488-489 (1955). In short, the judiciary may not sit as a super-legislature to judge the wisdom or desirability of legislative policy determinations made in areas that neither affect fundamental rights nor proceed along suspect lines. . . . It is only the invidious discrimination, the wholly arbitrary act, which cannot stand consistently with the Fourteenth Amendment. See, e. g., *Fergusson v. Skrupa,* 372 U. S. 726, 732 (1963)." *New Orleans v. Dukes,* 96 S. Ct. at 2517.

As this Court noted in *Dukes,* the Appellant's argument at Page 12 of her jurisdictional statement that the

burden of establishing the constitutionality of § 22.1 is upon the State of Illinois, is incorrect. See, also, *Vance v. Bradley,* 440 U. S. —, 99 S. Ct. 939 (1979). Further, neither the State of Illinois nor Appellees are under any burden to provide empirical data establishing the rationality of the classification, rather the burden is upon Appellant to establish the irrationality, if any, of the classifications. See, *Barry v. Barchi,* 441 U. S. —, 99 S. Ct. 2642 (1979).

In examining § 22.1, it is important to consider the legislative history of this provision so as to properly perceive the rationality of the legislature's response to problems created in the medical malpractice field by the Illinois Supreme Court's judicial adoption of the "discovery rule" in personal injury suits.

This history is set out in detail in the opinion of the Illinois Supreme Court in this cause. Prior to the decision in *Lipsey v. Michael Reese Hospital,* 46 Ill. 2d 32, 262 N. E. 2d 450 (1970), actions involving medical malpractice in Illinois were generally governed by the general provisions of the Limitations Act, which was a two-year limitation period calculated from the time of the occurrence of the alleged negligent act. In *Lipsey* the Illinois Supreme Court adopted the "discovery rule" and held that the limitation period would be calculated not from the time of the alleged negligent act, but from the time the plaintiff knew, or through the use of reasonable diligence should have known, of the injury. This rule worked a special hardship in the medical malpractice area as claims were allowed to be brought years, or as in the instant case, more than a decade after the occurrence of the alleged negligent act.

It was in this climate that the Illinois legislature considered and enacted § 22.1. This section reflects a rational compromise on the part of the legislature between the limitation rule applied before *Lipsey* and the discovery rule. The legislation was a rational response to the particular problems caused in the medical malpractice field because of the "long tail of liability" created by *Lipsey*. In enacting § 22.1 the legislature was attempting to protect the vital interests of society in having adequate health care provided at a reasonable cost—an interest recognized in *Wright v. Central DuPage Hospital Association,* 63 Ill. 2d 313, 347 N. E. 2d 736 (1976) (Underwood, J., concurring in part and dissenting in part).

In its opinion in this cause, the Illinois Supreme Court noted that Illinois was not alone in its passage of a special statute of limitations in medical malpractice areas, identifying many states that passed such limitation legislation (see opinion in appendix to appellant's jurisdictional statement, A10-12). The court further noted that a number of these statutes had been challenged on equal protection grounds, and that all of the statutes had been sustained against such an attack (see A13).

Appellant has principally objected to the classification established in § 22.1 affording its protection to doctors and hospitals and not others in the health care field. This Court has repeatedly noted a statutory classification does not violate the equal protection clause merely because the classifications contained therein are imperfect, noting that legislatures may implement their program step by step adopting regulations that only partially ameliorate a perceived evil and defraying complete elimination of the evil

to future regulations. See, *e. g., New Orleans v. Dukes,* 427 U. S. 297 (1976); *Dandridge v. Williams,* 397 U. S. 471 (1970). Statutes establishing classifications within the medical profession have been upheld in the following cases: *State ex rel. Schneider v. Ligget,* 223 Kan. 616, 576 P. 2d 221 (1978); *Sellers v. Edwards,* 289 Ala. 2, 265 So. 2d 438 (1972); *McCarty v. Goldstein,* 376 P. 2d 691 (Col., 1962).

III.

Section 22.1 of the Illinois Limitation Act does not improperly restrict any right or cause of action in violation of the due process clause.

Section 22.1 of the Illinois Limitation Act does not improperly take any property right of the appellant without notice in violation of the due process clause. Section 22.1 as a statute of limitation does not deny appellant any right but merely addresses her remedy and the manner of exercise of that right. This Court has noted the importance of statute of limitations, stating its recent decision in *United States v. Kubrick,* — U. S. —, 100 S. Ct. 352, 357 (1979), that "statutes of limitation . . . are founded and approved in all systems of enlightened jurisprudence."

In discussing such statutes in *Chase Securities Corporation v. Donaldson,* 325 U. S. 304 (1945), this Court stated that:

> "[Statutes of limitation] are by definition arbitrary, and their operation does not discriminate between the just and unjust claim, or the avoidable and unavoidable delay. They have come into the law not through the judicial process but through legislation. They represent a public policy about the privilege to litigate."

Chase Securities Corporation v. Donaldson, 325 U. S. at 314.

Courts of review have generally held that in examining a statute of limitation a vital question is one of reasonableness and that such statutes would not be stricken unless the period before the bar becomes effective was so short that it amounts to a virtual denial of the right itself. It is axiomatic that the application of the statute will under proper circumstances foreclose a plaintiff's cause of action. As the Supreme Court of Arkansas, in *Owen v. Wilson,* 266 Ark. 21, 24-25, 537 S. W. 2d 543, 545 (1976), stated:

> "Any statute of limitations will eventually operate to bar a remedy and the time within which a claim should be asserted is a matter of public policy, the determination of which lies almost exclusively in the legislative domain, and the decision of the General Assembly in that regard will not be interfered with by the courts in absence of palpable error in the exercise of the legislative judgment."

In *Owen,* that court upheld a medical malpractice statute of limitations setting an absolute period of six years against an attack that the provision was violative of due process. A similar result was reached by the court in *Landgraff v. Wagner,* 26 Ariz. App. 49, 546 P. 2d 26 (1976). Similar results have been reached in the recent cases of *Dunn v. St. Francis Hospital,* 401 A. 2d 77 (Del., 1979), and *Dun v. Felt,* 379 A. 2d 1140 (Del., 1977).

The Delaware Supreme Court in *St. Francis Hospital* observed:

> "In setting a time limit for inherently unknowable injuries, it must be remembered that a finite cut-off is probably necessary at some point in time regardless

> of the state of patient's knowledge if the policy considerations underlying the statute of limitations are to be vindicated . . . (omitting citations). It is the legislature and not the courts which must determine what the finite period is, and they are constrained only in that the time limit must not be unreasonable."
>
> *Dunn v. St. Francis Hospital,* 401 A. 2d at 81.

The time limit of four years established by the Illinois legislature in § 22.1 is reasonable and adequately affords this appellant due process of law.

CONCLUSION

The classifications established by § 22.1 of the Illinois Limitation Act are rationally related to a legitimate state interest and neither deny appellant equal protection of the law nor due process as guaranteed by the Constitution of the United States of America.

Respectfully submitted,

STEPHEN M. O'BYRNE
RENO, O'BYRNE & KEPLEY

501 West Church Street
Champaign, IL 61820

Attorney for Appellee,
Burnham City Hospital

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No. 79-2033

In the
Supreme Court of the United States
OCTOBER TERM, 1979

CAROL C. WOODWARD, as Administrator of the Estate of CHARLES C. WOODWARD, Deceased, and CAROL C. WOODWARD, Individually,

Appellant,

vs.

BURNHAM CITY HOSPITAL, a Corporation, and GEORGE GREEN, and STAN J. BOBOWSKI,

Appellees.

On Appeal From The Supreme Court Of Illinois

MOTION TO DISMISS OR AFFIRM

HURSHAL C. TUMMELSON
PHEBUS, TUMMELSON, BRYAN & KNOX
136 W. Main Street, P.O. Box 100
Urbana, Illinois 61801
(217) 367-1144
Attorneys for Appellee,
George Green

The Scheffer Press, Inc.—(312) 263-6850

TABLE OF CONTENTS

PAGE

Motion to Dismiss 1

Motion to Affirm 5

Conclusion 13

CITATIONS

CASES

Adams v. Russell, 229 U.S. 353, 33 S.Ct. 846, 57 L. Ed. 1224 (1913) 4

Bell Telephone Co. of Pa. v. Van Dyke, 296 U.S. 533, 56 S.Ct. 93, 80 L.Ed. 379 (1935) 3

Bilby v. Stewart, 246 U.S. 255, 38 S.Ct. 264, 62 L. Ed. 701 (1918) 3

Brown v. Board of Education, 347 U.S. 483, 74 S.Ct. 686, 98 L.Ed. 873 (1954) 6

California Power Works v. Davis, 151 U.S. 389, 14 S.Ct. 350, 38 L.Ed. 206 (1894) 4

Cornell S. B. Co. v. Phoenix Construction Co., 233 U.S. 593, 34 S.Ct. 701, 58 L.Ed. 1107 (1914) 3

Crossley v. New Orleans, 108 U.S. 105, 2 S.Ct. 300, 27 L.Ed. 667 (1883) 4

East Tennessee V. and G.R. Co. v. Frazier, 139 U.S. 288, 11 S.Ct. 517, 35 L.Ed. 196 (1891) 4

Flourney v. Wiener, 321 U.S. 253, 64 S.Ct. 548, 88 L.Ed. 708 (1944) 3

Friendship Medical Center, Ltd. v. Chicago Board of Health, 505 F.2d 1141 7

Graham v. Richardson, 91 S.Ct. 1848 (1971) 6-7

PAGE

Griswold v. Connecticut, 381 U.S. 479 (1965) 7

Holley v. Lawrence, 318 U.S. 518, 63 S.Ct. 394, 87 L.Ed. 434 (1943) 3

Jewel Tea Co. v. Rowe, 414 Ill. 496 at 503 2

Landgraff v. Wagner, 26 Ariz. App. 49, 546 P.2d 26, rev. den. (1976) 10, 11

Laughlin v. Forgrave, 432 S.W.2d 308 (Sup.Ct.Mo. 1968) 11

Lipsey v. Michael Reese Hospital, 46 Ill.2d 32 (1970) .. 8

Michigan v. Tyler, 98 S.Ct. 1942, 436 U.S. 499, 56 L. Ed.2d 486 2

Mier v. Staley, 329 N.E.2d at 8 7

Morey v. Doud, 354 U.S. 457 (1957) 5

McCarty v. Goldstein, 376 P.2d at 691 11

McDonald v. Board of Elections, 89 S.Ct. 1404, 394 U.S. 802 ..... 2, 9

New Orleans v. Dukes, 96 S.Ct. 2513, 49 L.Ed.2d 511 (1976) 5

Owen v. Wilson, 537 S.W.2d 543 (S.Ct.Ark. 1976) ..7, 11

Rogers v. Hennepin County, 240 U.S. 184, 36 S.Ct. 265, 60 L.Ed. 594 (1916) 3

Roybal v. White, 383 P.2d 250 (N.M. 1963) 8

Ruth v. Dight, 453 P.2d 631 (Wash. 1969) 8

San Antonio Indep. School District v. Rodriequez, 93 S.Ct. 1278 (1973) 7

Sellers v. Edwards, 289 Ala.2, 265 So.2d 438 (1972) .. 11

Shapiro v. Thompson, 394 U.S. 618 (1969) 7

Sheedy v. Department of Registration, 33 Ill.2d 573 at 574 2

PAGE

Sullivan v. Midlothian Park District, 51 Ill.2d 274, 281 N.E.2d 659 (1972) 7

Thillens v. Hodges, 2 Ill.2d 45 2

Walter A. Wood Mowing and Reaping Mach. Co. v. Skinner, 139 U.S. 293, 11 S.Ct. 528, 35 L.Ed. 193 (1891) 4

Weber v. Aetna Casualty & Surety Co., 406 U.S. 164 (1972) 7

Wright v. Central DuPage Hospital Association, 63 Ill.2d 313 (1976) 9

Zacchini v. Scripps-Howard Broadcasting Co. 433 U.S. 562, 97 S.Ct. 2849, 53 L.Ed.2d 965 (1977) 3

MISCELLANEOUS

Limitations of Actions, 51 Am.Jur.2d, Section 146 8

IN THE

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vs.

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Appellees.

On Appeal From The Supreme Court Of Illinois

MOTION TO DISMISS OR AFFIRM

MOTION TO DISMISS

George Green, Appellee, moves to dismiss the appeal in the above entitled cause for the reason that no substantial federal question is involved and that the federal question sought to be reviewed was not timely or properly raised, and that the judgment rests on an adequate non-federal basis.

A.

The failure to present a federal question in conformance with State procedure constitutes adequate and independent grounds of decision barring a review in the United States Supreme Court. *Michigun* v. *Tyler*, 98 S. Ct. 1942, 436 U.S. 499, 56 L.Ed.2d 486.

B.

All presumption favors the constitutionality of legislation and where a statute is alleged to be unconstitutional, the objection must be specific and complete in order to present fully the matter to the trial court.

McDonald v. *Board of Elections*, 89 S.Ct. 1404, 394 U.S. 802.
Jewel Tea Co. v. *Rowe*, 414 Ill. 496 at 503.
Sheedy v. *Department of Registration*, 33 Ill. 2d 573 at 574.
Thillens v. *Hodges*, 2 Ill. 2d 45.

C.

This case was decided at the state level on the state question of whether or not the statute in question was considered to be "special legislation" and thus in violation of Article IV, Section 13 of the Illinois Constitution of 1970 which states:

> "The general assembly shall pass no special or local law when a general law is or can be made applicable. Whether a general law is or can be made applicable shall be a matter for judicial determination.

The Illinois Supreme Court ruled that the statute was not special legislation, and that it was a reasonable action under the state's police power. Although the court also

looked to the federal questions claimed, the Illinois Supreme Court decision was accomplished and is sustained on this non-federal question of special legislation.

The United States Supreme Court will not entertain jurisdiction to review a state court's judgment where, besides the federal question decided by the state court, there is another and distinct ground on which the judgment can be sustained.

Zacchini v. *Scripps-Howard Broadcasting Co.*, 433 U.S. 562, 97 S. Ct. 2849, 53 L.Ed2d 965 (1977).

Bilby v. *Stewart,* 246 U.S. 255, 38 S.Ct. 264, 62 L.Ed. 701 (1918).

Rogers v. *Hennepin County*, 240 U.S. 184, 36 S. Ct. 265, 60 L.Ed. 594 (1916).

Cornell S. B. Co. v. *Phoenix Construction Co.*, 233 U.S. 593, 34 S.Ct. 701, 58 L.Ed. 1107 (1914).

An appeal from a state court to the Supreme Court of the United States will be dismissed where the decision of the federal court was based upon a non-federal ground adequate to support it.

Holley v. *Lawrence*, 318 U.S. 518, 63 S.Ct. 394, 87 L.Ed. 434 (1943).

Bell Telephone Co. of Pa. v. *Van Dyke*, 296 U.S. 533, 56 S.Ct. 93, 80 L.Ed. 379 (1935).

The Supreme Court will not review the state court's decision of a federal question where it appears that decision does not rest on a federal ground.

Flourney v. *Wiener*, 321 U.S. 253, 64 S.Ct. 548, 88 L.Ed. 708 (1944).

It is enough, to give this court jurisdiction over the judgment of a state court, for the record to show that a federal question was argued or presented to the state court for decision. It must appear that its decision was necessary to the determination of the cause, and that it was actually decided, or that the judgment could not have been given without it.

Adams v. *Russell*, 229 U.S. 353, 33 S.Ct. 846, 57 L.Ed. 1224 (1913).

California Power Works v. *Davis*, 151 U.S. 389, 14 S.Ct. 350, 38 L.Ed. 206 (1894).

Walter A. Wood Mowing and Reaping Mach. Co. v. *Skinner*, 139 U.S. 293, 11 S.Ct. 528, 35 L. Ed. 193 (1891).

Another point is that where the record presents a federal question, but that question was not the principal matter litigated, but was put into the record for the purpose of an appeal, there is color for motion to dismiss.

East Tennessee V. And G.R. Co. v. *Frazier*, 139 U.S. 288, 11 S.Ct. 517, 35 L.Ed. 196 (1891).

Lastly, and importantly, where the case was disposed of in the state court before the federal question was reached, and its decision was placed on other grounds, the Federal Supreme Court has no jurisdiction.

Crossley v. *New Orleans*, 108 U.S. 105, 2 S.Ct. 300, 27 L.Ed. 667 (1883).

MOTION TO AFFIRM

George Green, Appellee, moves to affirm the decision of the Supreme Court of Illinois because it is clearly right and no federal constitutional questions are involved.

I.

The legislative classification in Section 22.1 does not restrict any "fundamental right" that requires the application of "strict judicial scrutiny."

This court recently explained the modern fourteenth amendment standards in *New Orleans* v. *Dukes*, 96 S.Ct. 2513, 49 L.Ed.2d 511 (1976). *New Orleans* v. *Dukes*, overruled an earlier Supreme Court decision, *Morey* v. *Doud*, 354 U.S. 457 (1957). *Morey* v. *Doud* invalidated a state licensing scheme for firms issuing money orders. The statute specifically exempted the American Express Company from regulation. *Morey* was the last vestige of an interventionist judicial attitude long repudiated by the Supreme Court. As the Court explained in *New Orleans* v. *Dukes*:

> "*Morey* v. *Doud*, as the dissenters in that case correctly pointed out, see 354 U.S. at 474-475 (Frankfurter, J., dissenting), was a needlessly intrusive judicial infringement on the State's legislative powers, and we have concluded that the equal protection analysis employed in that opinion should no longer be followed. *Morey* was the only case in the last half century to invalidate a wholly economic regulation solely on equal protection grounds, and we are now satisfied that the decision was erroneous. . . *The decision so far departs from proper equal protection analysis. . . that it should be, and it is, overruled.*"

The Court explained the current equal protection standard as follows:

> "unless a classification trammels fundamental personal rights or is drawn upon inherently suspect distinctions such as race, religion, or alienage, our decisions presume that constitutionality of the statutory discriminations and require only that the classification challenged be rationally related to a legitimate state interest. States are accorded wide latitude in the regulation of their local economies under their police powers, and rational distinctions may be made with substantially less than mathematical exactitude. Legislatures may implement their program step-by-step, *Katzenbach* v. *Morgan*, 384 U.S. 641 (1966), in such economic areas, adopting regulations that only partially ameliorate a perceived evil and deferring complete elimination of the evil to future regulations. See, e.g. *Williamson* v. *Lee Optical Co.*, 348 U.S. 483, 488-9 (1955). In short, the judiciary may not sit as a superlegislature to judge the wisdom or desirability of legislative policy determinations made in areas that neither affect fundamental rights nor proceed along suspect lines . . . it is only the wholly arbitrary act, which cannot stand consistently with the Fourteenth Amendment. See, e.g., *Ferguson* v. *Skrupa*, 372 U.S. 726, 732 (1963).

The legislative classification in Section 22.1 does not restrict any "fundamental right" that requires the application of "strict judicial scrutiny." Strict scrutiny will normally be applied only when the legislation is based upon racial or ethnic classifications. See, e.g., *Brown* v. *Board of Educatom*, 347 U.S. 483, 74 S.Ct. 686, 98 L. Ed. 873 (1954) (race); *Graham* v. *Richardson*, 403 U.S.

365, 91 S.Ct. 1848, 29 L.2d 534 (1971) (alienage). The constitutionality of other legislation is judged under the "rational basis" test unless it restricts the exercise of some "fundamental right." The only rights which have ever been held fundamental for equal protection purposes are those which concern the most basic human dignities. See, e.g., *Griswold* v. *Connecticut*, 381 U.S. 479 (1965), (marital right to privacy); *Shapiro* v. *Thompson*, 394 U. S. 618 (1969) (right to travel); *Weber* v. *Aetna Casualty & Surety Co.*, 406 U.S. 164 (1972) (invalidating a statute which discriminated against illegitimate children). *Friendship Medical Center, Ltd.* v. *Chicago Board of Health*, 505 F.2d 1141 (women's right to privacy re: abortion), *Graham* v. *Richardson*, 91 S.Ct. 1848 (1971) (resident aliens in the United States are "persons" within XIV and can't be denied federal welfare payments by Arizona Statute). *San Antonio Indep. School District* v. *Rodrieguez*, 93 S.Ct. 1278 (1973) (class action for school children re: financing public education).

Even if the right to sue and collect damages is considered to be fundamental, Section 22.1 does not violate this right. The constitutional right to a remedy for injuries "do(es) not require that any specific form of remedy be provided plaintiff, rather they are the expression of a philosophy that some remedy be provided." *Mier* v. *Staley*, 329 N.E. 2d at 8. See *Sullivan* v. *Midlothian Park District*, 51 Ill. 2d 274, 281 N.E.2d 659 (1972). The cases have consistently upheld limitations upon rights of action against claims that they denied the right to a remedy. See, e.g., *Mier* v. *Staley*, 329 N.E.2d at 8 (immunizing corporate officers from certain tort claims); *Owen* v. *Wilson*, 537 S.W.2d 543 (S.Ct.Ark. 1976 (two year statute of limitations for medical malpractice actions ran from the time of the negligent act).

"(T)he mere fact that a person entitled to an action has no knowledge of his right to sue, or of the facts out of which his right arises, does not prevent the running of the statute or postpone the period of limitation until he discovers the facts or learns of his rights thereunder. . . ." 51 Am.Jur.2d, *Limitations of Actions,* Section 146.

II.

The plaintiff's action was barred by the Statute of Limitations and there was no violation of Due Process of Law.

Section 22.1 modified the common law rule that was announced in *Lipsey* v. *Michael Reese Hospital,* 45 Ill. 2d 32 (1970). *Lipsey* held that the running of the standard two year statute of limitations for personal injuries did not begin until the plaintiff knew, or through the use of reasonable diligence should have known, of the injury. The *Lipsey* case overruled the previous rule that the statute began to run from the time of the negligent *act,* and established the so-called "discovery rule." Other jurisdictions have split over when the statute of limitations for malpractice cases begin to run. Compare, e.g., *Ruth* v. *Dight,* 453 P.2d 631 (Wash. 1969) (following the discovery rule), with, *Roybal* v. *White,* 383 P.2d 250 (N. M. 1963) (statute runs from the time of the negligent act).

In determining which rule to follow, the courts have had to balance the problems involved with allowing actions based on treatment received years in the past against the possibility of barring some claims which are not discovered until many years after the negligent act. The problems of proof are staggering when, as here, the alleged negligence has occurred more than a decade in the past. Witnesses and records are often unattain-

able, memories are faded, and the possibility of a fair trial is diminished. The discovery rule is particularly unsatisfactory in the field of medical malpractice. Advances in medical knowledge and procedures are occurring every day. What is standard medical practice one year may be grossly negligent a few years later. It is difficult to ignore our present knowledge when judging the actions of those in the distant past.

When enacting Section 22.1 the Illinois Legislature was faced with the above considerations, as well as with the growing concern over the increase in malpractice litigation. The provisions of Section 22.1 reflect a compromise between the two common law rules. Under the statute, the malpractice victim has two years in which to file suit from the time he or she knows, or through the use of reasonable diligence should have known, of the injury. This is the usual statutory period applicable to all personal injury actions. Furthermore, in response to the problems peculiar to medical malpractice actions, the legislature provided that in no event shall such actions be brought more than four years from the alleged negligent act. Section 22.1 is a legislative attempt to protect "the vital interest, if not the necessity, of society in having adequate health care available at reasonable cost." *Wright* v. *Central DuPage Hospital Association,* 63 Ill. 2d 313 (1976) (Underwood J., concurring in part and dissenting in part).

Plaintiff errs when she argues that the State of Illinois has some sort of burden to establish the validity of this legislation (P.12 of Jurisdictional Statement). In fact, all presumptions are in favor of the constitutionality of legislation and the burden of showing unconstitutionality rests with the person who asserts it. *McDonald* v. *Board of Education,* 89 S.Ct. 1404, 394 U.S. 802.

In our case, the plaintiff introduced *no evidence* concerning the presence of; the absence of; or the magnitude of any medical malpractice crisis. This comes about only through plaintiff's argument. In addition, the plaintiff at no stage of the proceeding, raised, specifically, any federal constitutional questions.

The legislature is responsible, primarily for determining proper legislative areas and goals.

Illinois is one of many states that have enacted special statutes of limitation for medical malpractice cases. The constitutionality of these statutes has consistently been upheld in jurisdictions which have considered the issue. In *Landgraff* v. *Wagner*, 26 Ariz. App. 49, 546 P.2d 26, rev. den. (1976), the Court of Appeals of Arizona considered the constitutionality of a statute of limitations very similar to Section 22.1. It provided that all malpractice actions be brought "within six years from the date of injury or two years after the injured party discovers or through the use of reasonable diligence should have discovered the malpractice, whichever period first occurs." A.R.S. Section 12-542 (B). The plaintiff in *Landgraff* claimed that the statute denied her protection, due process, and the right to a remedy. The court upheld the validity of the statute, saying:

> We find that the importance to the public of good health care and the problems which arise when malpractice claims are brought against health providers after the passage of many years constitute sufficient reasons for the legislature to place them in a separate classification for this purpose. In finding a rational basis to the classification, we are supported by decisions from other states.

While no attempt will be made to discuss them individually, the cases from other jurisdictions have all followed the same general reasoning as *Landgraff*. See *Owen* v. *Wilson*, 537 S.W.2d at 543 (two year statute of limitations for malpractice actions which ran from time of negligent act not violative of due process or right to remedy); *Sellers* v. *Edwards*, 289 Ala.2, 265 So.2d 438 (1972) (two year statute of limitations for malpractice actions which ran from time of negligent act did not violate Fourteenth Amendment); *Laughlin* v. *Forgrave*, 432 S.W.2d 308 (Sup. Ct.Mo. 1968) (two year statute of limitations for malpractice actions which ran from time of negligent act did not deny due process or equal protection); *McCarty* v. *Goldstein*, 376 P.2d at 691 (two year statute of limitations for malpractice actions not "special legislation" and did not deny equal protection.)

Statutes of limitations are clearly constitutional, and the guarantee of due process of law does not mean that actions can be filed notwithstanding the prescribed period of limitations.

III.

Section 22.1 of the Illinois Limitation Act is a proper exercise of legislative judgment for the purpose of accomplishing a rational and proper legislative goal. There is no violation of the due process clause.

Plaintiff's argument that hypothetical plaintiffs might be deprived of their actions for damages "without ever having known that they had it" (P. 13 of Jurisdictional Statement) presupposes that the doctors would know it. This is patently not so!

The due process clause requires that the "property rights" of all persons be protected -- this includes the doctors as well as the complaining patients.

This is what the legislature dealt with, and it did so in a fair and reasonable manner. Section 22.1 is a legislative compromise between the rules adopted by the Illinois Courts -- one stating the statute of limitations commences to run from the time of the negligent act, and the other holding the statute starts to run when the party "knew or should have know" of the injury.

Surely, this legislative judgment is neither palpably unfair nor erroneous. This is the proper exercise of legislative judgment, and there is no violation of the due process clause.

IV.

Section 22.1 does not deny access to the Courts, but like other statutes of limitations, it places reasonable time limitations on bringing action.

If the legislature had provided a time limitation of *twenty-five years* instead of four years, complaint might still be made; but the fundamental question would be the same. Did the legislature exercise reasonable legislative judgment.

Certainly, *all* persons are entitled to due process! We urge that this legislation does not deprive any person of due process of law.

CONCLUSION

The classification used has a definite basis and is reasonably related to a proper state interest. The decision of the Supreme Court of the State of Illinois should be affirmed.

Respectfully submitted,

HURSHAL C. TUMMELSON
PHEBUS, TUMMELSON, BRYAN & KNOX
136 W. Main Street, P.O. Box 100
Urbana, Illinois 61801
(217) 367-1144
Attorneys for Appellee,
George Green

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REPLY TO MOTIONS TO DISMISS OR AFFIRM

LEONARD M. RING
SHELDON H. NAHMOD
LEONARD M. RING & ASSOCIATES
111 West Washington Street
Chicago, Illinois 60602
(312) 332-1765

Attorneys for Appellant

Pandick Press Midwest, Inc. Chicago • 454-7600

CITATIONS

Cases	Page
Herb v. *Pitcairn*, 324 U.S. 117 (1945)	2
New Orleans v. *Dukes*, 427 U.S. 297 (1976)	3

Laws

Ill. Rev. Stat. 1976 Supp. ch.83, Sec.22.1	1, 3

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1979

CAROL C. WOODWARD, AS ADMINISTRATOR OF THE ESTATE OF CHARLES C. WOODWARD, DECEASED, AND CAROL C. WOODWARD, INDIVIDUALLY,

Appellant,

vs.

BURNHAM CITY HOSPITAL, A CORPORATION, AND GEORGE GREEN AND STAN J. BOBOWSKI,

Appellees.

ON APPEAL FROM THE SUPREME COURT OF ILLINOIS

REPLY TO MOTIONS TO DISMISS OR AFFIRM

Appellant is constrained to respond briefly to several contentions made by the Appellees and Amicus Curiae in their Motions to Dismiss or Affirm.

I.

Appellees' suggestion that the Illinois Supreme Court decision appealed from is based solely on the non-federal

ground of special legislation is clearly erroneous. Appellees conveniently ignore that once the Illinois Supreme Court upheld section 22.1 of the Illinois Limitations Act against a state constitutional challenge, it had to reach and deal with—*as it in fact expressly did*—the challenge to that statute based on the Fourteenth Amendment.

The Illinois Supreme Court's decision on the Fourteenth Amendment issues was necessary to its decision on the merits. Only if the Illinois Supreme Court had first held the Illinois statute *invalid* under the Illinois Constitution and had then gone on to conclude that the statute was *also invalid* under the Fourteenth Amendment would its decision be based on an independent non-federal ground. Indeed, those circumstances would present a classic case of an independent state ground.

But that is not what happened here. In the present case, that portion of the Illinois Supreme Court's decision upholding the Illinois Limitations Act against a Fourteenth Amendment challenge was an indispensable part of that Court's decision. There was no way for the Illinois Supreme Court to avoid confronting Appellant's properly raised Fourteenth Amendment challenge after it upheld the validity of the statute on state constitutional grounds.

Also significant in this regard is that a decision by this Court holding the Illinois statute invalid on Fourteenth Amendment grounds would *change the result.* As Justice Jackson stated in *Herb* v. *Pitcairn,* 324 U.S. 117 (1945):

> This Court from the time of its foundation has adhered to the principle that it will not review judgments of state courts that rest on adequate and independent state grounds. [T]he reason is so obvious that it has rarely been thought to warrant statement. It is found in the partitioning of power between the state and federal judicial systems and in the limitations of our own jurisdiction. Our only power over state judgments is to correct them to the extent that they incorrectly adjudge federal rights. And our

> power is to correct wrong judgments, not to revise opinions. We are not permitted to render an advisory opinion, and *if the same judgment would be rendered by the state court after we corrected its views of federal laws,* our review could amount to nothing more than an advisory opinion. (Emphasis added)

Very clearly, therefore, the Illinois Supreme Court's decision does not rest on an independent state ground.

II.

Little need be said about Appellees' reliance on *New Orleans* v. *Dukes,* 427 U.S. 297 (1976) for the proposition that the traditional and "non-interventionist" equal protection test is applicable here, except to note what is obvious. Unlike the present case, *Dukes* is an *economic regulation* case. In such cases, this Court has for over four decades used a traditional equal protection test. But *Dukes* does not and has not undercut this Court's continuing use in appropriate cases of an intermediate standard of equal protection review, of strict scrutiny equal protection review, and of non-deferential due process review.

Appellant submits, as set out in her Jurisdictional Statement, that this case is one to which these other equal protection and due process tests must be applied.

III.

Appellant finally emphasizes that this case does not, contrary to Appellees' characterization, deal with a typical statute of limitations. Rather, section 22.1 of the Illinois Limitations Act *destroys* medical malpractice causes of action before they can be discovered by injured patients and carves out a privileged class of physicians and hospitals unlike all

other providers of health care and manufacturers and suppliers of medical equipment and pharmaceuticals. Under this statute physicians and hospitals are immunized from suit where their negligence goes undetected for four years, but not the manufacturer of the defective medical instrument used, the manufacturer of the harm causing drug, or the nurse or x-ray laboratory technician who used it. Likewise, the physician-anesthetist is beyond reach of suit, but the nurse-anesthetist is not. The physician-surgeon can hide behind the statute, but a dentist-surgeon cannot. This, we submit, is a statutory scheme different in kind from a statute of limitations, and is clearly in violation of the equal protection and due process clauses of the Fourteenth Amendment.

CONCLUSION

Appellant asks that Appellees' Motions to Dismiss or Affirm be denied and that probable jurisdiction be noted.

Respectfully submitted,

LEONARD M. RING
SHELDON H. NAHMOD
LEONARD M. RING & ASSOCIATES
111 West Washington Street
Chicago, Illinois 60602
(312) 332-1765

Attorneys for Appellant

Supreme Court, U. S.
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No. 79-2033

In the

Supreme Court of the United States

OCTOBER TERM 1979

CAROL C. WOODWARD, as Administrator of the Estate of CHARLES C. WOODWARD, Deceased, and CAROL C. WOODWARD, Individually,

Appellant,

vs.

BURNHAM CITY HOSPITAL, a corporation and GEORGE GREEN and STAN J. BOBOWSKI,

Appellees.

On Appeal from the Supreme Court of Illinois.

BRIEF OF ILLINOIS HOSPITAL ASSOCIATION AMICUS CURIAE

HARRY L. KINSER
McLAUGHLIN KINSER & BRYANT
135 S. LaSalle - Suite 1200
Chicago, Illinois 60603
782-8018
Counsel for Amicus Curiae

EDWARD J. McLAUGHLIN
KENNETH C. ROBBINS
McLAUGHLIN KINSER & BRYANT
135 S. LaSalle - Suite 1200
Chicago, Illinois 60603
Of Counsel

The Scheffer Press, Inc.—(312) 263-6850

TABLE OF CONTENTS

	PAGE
Statement of Interest	2
Argument	4
Conclusion	10
Appendix A	1a
Letter from Hurschal C. Tummelson stating no objection to Amicus Curiae brief	1a
Appendix B	2a
Letter from Leonard M. Ring stating no objection to Amicus Curiae brief	2a
Appendix C	3a
Letter from George S. Miller stating no objection to Amicus Curiae brief	3a
Appendix D	4a
Letter from Stephen M. O'Byrne stating no objection to Amicus Curiae brief	4a

CITATIONS

Cases

Mosby v. *Michael Reese Hospital* (1964) 49 Ill. App. 2d 336	4
Lipsey v. *Michael Reese Hospital,* (1970) 46 Ill. 2d 32	5
United States v. *Kubrick,* 100 Sup. Ct. 352, 357 (1979)	6
McGowan v. *Maryland,* 366 U.S. 420, 425-426, 81 S. Ct. 1101, 1105, 6 L. Ed. 2d 393 (1961)	8

PAGE

Dandridge v. Williams, 397 U.S. 471, 90 S. Ct. 1153, 1161, 25 L. Ed. 2d 491 (1970) 501-502 of 25 L. Ed. 2d 8

McDonald v. *Board of Election Commissions of Chicago,* 394 U.S. 802, 89 S. Ct. 1404, 22 L. Ed. 2d 739 (1969) 745, 746 of 22 L. Ed. 8

Wilson v. *Iseminger,* 185 U.S. 55, 62 (1902) 9

LAWS

Ill. Rev. Stat. 1976 Supp. ch. 83, Sec. 22.1 2

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1979

No. 79-2033

CAROL C. WOODWARD, as Administrator of the Estate of CHARLES C. WOODWARD, Deceased, and CAROL C. WOODWARD, Individually,

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Appellees.

On Appeal from the Supreme Court of Illinois.

BRIEF OF ILLINOIS HOSPITAL ASSOCIATION AMICUS CURIAE

The Illinois Hospital Association submits herewith its brief in support of the position taken by the Appellees in this case who are filing Motions to Dismiss or Affirm as provided for in Rule 16 of the Rules of this Court.

Counsel for all parties to this cause have consented to the filing of this brief (Rule 42 of the Rules of this Court) and attached hereto as an Appendix are copies of such written consents.

The Illinois Hospital Association was an Amicus Curiae when this matter was before the Supreme Court of Illinois.

STATEMENT OF INTEREST

The Illinois Hospital Association is a statewide association of substantially all Illinois hospitals, having a membership of approximately 300.

The decision of the Supreme Court of Illinois from which Appellant's appeal is taken is to consider the constitutionality of Section 22.1 of the Illinois Limitations Act being Ill. Rev. Stats. 1976 Supp. ch. 83, par. 22.1 reading as follows:

> "No action for damages for injury or death against any physician or hospital duly licensed under the laws of this State whether based upon tort, or breach of contract, or otherwise, arising out of patient care shall be brought more than 2 years after the date on which the claimant knew, or through the use of reasonable diligence should have known, or received notice in writing of the existence of the injury or death for which damages are sought in the action, whichever of such date occurs first, but in no event shall such action be brought more than 4 years after the date on which occurred the act or omission or occurrence alleged in such action to have been the cause of such injury or death.
>
> If the person entitled to bring the action is, at the time the cause of action occurred, under the age of 18 years, or insane, or mentally ill, or imprisoned on criminal charges, the period of limitations does not begin to run until the disability is removed."

A decision of this court involving the constitutionality of the above statutory provision will have an important effect not only on the parties to this litigation but to all

the hospitals in Illinois. The case, therefore, transcends the interests of the parties hereto. If the four year limitation period is found to be unconstitutional, it will broaden considerably in medical malpractice cases the potential liability of all Illinois hospitals.

It is the position of the Amicus Curiae that Section 22.1 of the Illinois Limitations Act satisfies completely the requirements of Equal Protection and Due Process and it should be constitutionally sustained.

ARGUMENT

The decision of the Illinois Supreme Court finding that Section 22.1 of the Illinois Limitations Act satisfies constitutional requirements was correct and the statute is not violative of the Equal Protection and Due Process clause of the Fourteenth Amendment to the United States Constitution.

In this Court's consideration of the constitutionality of the challenged Illinois Limitations statute, it is important to notice the legislative history of the statutory provision.

This history is set out in detail in the opinion of the Illinois Supreme Court which is attached to plaintiff's jurisdiction statement (A8-A10). Prior to 1965, actions involving medical malpractice in Illinois were governed by the general provisions of the limitations act which was a two year limitation period. In 1964 in an Illinois Appellate Court opinion, the court had expressed dissatisfaction with the two year statute in a case involving the allegation that a surgical needle had been left in the body of the plaintiff-patient, that she did not discover until four years later when she had a second operation (*Mosby* v. *Michael Reese Hospital,* (1964) 49 Ill. App. 2d 336. At the next session of the Illinois General Assembly the legislature sought to alleviate the problem by providing in substance that where a foreign object has been introduced to a person's body and was negligently permitted to remain there, the period of time within which an action must be brought would not begin to run until the person knew or should have known of this fact, with an outside 10 year limitation following the

treatment or operation. It should be noted that other than cases involving foreign objects, the two year provision of the Limitations Act still applied. In 1970, in the case of *Lipsey* v. *Michael Reese Hospital,* (1970) 46 Ill. 2d 32, the Illinois Supreme Court applied the discovery rule to a medical malpractice case not involving a foreign object left in the patients body and held that the cause of action did not accrue until the injured person learned of the injury or should have learned of it. Thereafter, this so-called discovery rule played a significant role in the growing medical malpractice crisis and it came to be known as the "long tail of liability". The result was that insurance companies were increasingly reluctant to insure against medical malpractice liability. This result was not limited to the state of Illinois as the opinion of the Supreme Court of Illinois amply demonstrates. (App. 10 plaintiff's jurisdictional statement to and including App. 13). Throughout the country, legislatures were seeking to deal with this problem by permitting plaintiffs in medical malpractice cases more time than the usual two years to institute legal action but at the same time to set an outside limit for filing such lawsuits. Thus, in 1975, the Illinois General Assembly amended Section 21.1 of the Limitations Act by adding to its previous provisions concerning a foreign object a provision limiting the time within which other malpractice actions may be brought to two years. However, the statute further provided an outside time limit of 5 years for bringing this type of action in cases where the discovery rule was applicable.

In 1976 Section 21.1 was again amended deleting the special provisions concerning foreign objects left in the body and providing that all malpractice actions against

physicians and hospitals arising out of patient care shall not be brought more than two years after the claimant knew or should have known of the existence of the injury but in no event more than 4 years after the date on which occurred the last act or omission alleged to have been the cause of such injury.

The foregoing history illustrates that the Illinois Legislature was seeking to deal with the problem of the length of time that a plaintiff in a medical malpractice case should be given to file a suit where the "discovery" rule might be involved while at the same time, placing some reasonable limit on the length of time within which such actions must be filed. This Court, in the case of *United States* v. *Kubrick*, 100 Sup. Ct. 352 (1979) pointed out the importance of statutes of limitations and the necessity that they be given effect by the courts in saying as follows at page 357 of 100 S. Ct.:

> "Statutes of limitation, which "are founded and approved in all systems of enlightened jurisprudence," *Wood* v. *Carpenter*, 101 U.S. 135, 139, 25 L. Ed. 807 (1879), represent a pervasive legislative judgment that it is unjust to fail to put the adversary on notice to defend within a specified period of time and that "the right to be free from stale claims in time comes to prevail over the right to prosecute them." *Order of Railway Telegraphers* v. *Railway Express Agency*, 321 U.S. 342, 349, 64 S. Ct. 582, 586, 88 L. Ed. 788 (1944). These enactments are statutes of repose; and although affording plaintiffs what the legislature deems a reasonable time to represent their claims, they protect defendants and the courts from having to deal with cases in which the search for truth may be seriously impaired by the loss of evidence, whether by death or disappearance of wit-

nesses, fading memories, disappearance of documents, or otherwise."

Citing cases

"Section 2401(b), the limitations provision involved here, is the balance struck by Congress in the context of tort claims against the Government; and we are not free to construe it so as to defeat its obvious purpose, which is to encourage the prompt presentation of claims. *Campbell* v. *Haverhill,* 155 U.S. 610, 617, 39 L. Ed. 280 (1895); *Bell* v. *Morrison,* supra, at 360. We should regard the plea of limitations as a "meritorious defense, in itself serving a public interest." *Guaranty Trust Co.* v. *United States,* 304 U.S. 126, 136, 58 S. Ct. 785, 790, 82 L. Ed. 1224 (1938)".

There can be no doubt that there was in Illinois, as there was in other states, a medical malpractice crisis and the opinion of the Illinois Supreme Court amply establishes that fact.

The appellant's principle contention in arguing that the Supreme Court of Illinois violated the equal protection and due process clauses lies in the fact that the 4 year statute applies to physicians and hospitals and not others in the health care field. This is an instance wherein the Illinois legislature was seeking to deal with the problem at its most serious point of impact. At p. A20-A21 of the Appendix to plaintiff's jurisdictional statement, the Supreme Court of Illinois documents that medical malpractice claims made against physicians and hospitals in 1977 together accounted for 95% of the total number of medical malpractice claims and 98% of the dollar amounts of those claims paid.

This Court has frequently held that state legislatures have wide authority in enacting legislation to meet par-

ticular problems that will not be found to violate equal protection or due process if a reasonable ground can be found to sustain them.

In *McGowan* v. *Maryland,* 366 U.S. 420, 425-426, 81 S. Ct. 1101, 1105, 6 L. Ed. 2d. 393 (1961) this court said at pages 425-426, 366 U.S. as follows:

> "The constitutional safeguard of (equal protection) is offended only if the classification rests on grounds wholly irrelevant to the achievement of the state's objective. State legislatures are presumed to have acted within their constitutional power despite the fact that, in practice, their law results in some inequality. A statutory discrimination will not be set aside if any statement of facts may be reasonably conceived to justify it."

Again in *Dandridge* v. *Williams,* 397 U.S. 471, 90 S. Ct. 1153, 1161, 25 L. Ed. 2d. 491 (1970) this court stated at pages 501-502 of 25 L. Ed. 2d as follows:

> "If the classification has some 'reasonable basis' it does not offend the Constitution simply because the classification 'is not made with mathematical nicety or because in practice it results in some inequality' " (quoting *Lindsley* v. *Natural Carbonic Gas Co.,* 220 U.S. 61, 78, 31 S. Ct. 337, 55 L. Ed. 369 at 377 (1911)

In *McDonald* v. *Board of Election Commissioners of Chicago,* 394 U.S. 802, 89 S. Ct. 1404, 22 L. Ed. 2d 739 (1969) this court said at pages 745, 746 of 22 L. Ed.:

> "Though the wide leeway allowed the States by the Fourteenth Amendment to enact legislation that appears to affect similarly situated people differently, and the presumption of statutory validity that adheres thereto, admit of no settled formula, some basic guidelines have been firmly fixed. The distinctions

drawn by a challenged statute must bear some rational relationship to a legitimate state end and will be set aside as violative of the Equal Protection Clause only if based on reasons totally unrelated to the pursuit of that goal. Legislatures are presumed to have acted constitutionally even if source materials normally resorted to for ascertaining their grounds for action are otherwise silent, and their statutory classifications will be set aside only if no grounds can be conceived to justify them."

Citing cases.

"With this much discretion, a legislature traditionally has been allowed to take reform "one step at a time, addressing itself to the phase of the problem which seems most acute to the legislative mind," *Williamson* v. *Lee Optical of Oklahoma, Inc.*, 348 U.S. 483, 489, 99 L. Ed. 563, 573, 75 S. Ct. 461 (1955); and a legislature need not run the risk of losing an entire remedial scheme simply because it failed, through inadvertence or otherwise, to cover every evil that might conceivably have been attacked. See *Ozan Lumber Co.* v. *Union County National Bank*, 207 U.S. 251, 52 L. Ed. 195, 28 S. Ct. 89 (1907)."

With specific reference to the due process question, the Plaintiff in the jurisdictional statement at p. 13 cites *Wilson* v. *Iseminger*, 185 U.S. 55, 62 (1902). It should be noted that following the quote used by the plaintiff ending with the words "it is essential that such statutes allow a reasonable time" this court made the following statement. At 63 of 185 U.S.:

"Though what shall be considered a reasonable time must be settled by the judgment of the legislature, and the courts will not inquire into the wisdom of its decisions in establishing the period of legal bar, unless the time allowed is manifestly so insufficient that the statute becomes a denial of justice."

CONCLUSION

The amicus curiae respectfully submits that the appellees should prevail in this court's consideration of the issues raised since the Illinois Supreme Court in its opinion amply demonstrated the considerable problems faced by the Illinois legislature in meeting the question of how to make a fair provision for plaintiffs in medical malpractice cases in those instances in which a plaintiff was not immediately aware that malpractice may have been committed but at the same time providing a cut off date beyond which such actions could not be filed. Limiting the four year period to physicians and hospitals was simply a recognition by the Illinois legislature that it was physicians and hospitals against whom the overwhelming number of medical malpractice cases are filed. Based on this court's decisions, the Illinois legislature had a constitutionally permissible right to seek to meet the problem at its most serious point of impact and was not required to enact a statute to cover every conceivable cause of action.

The decision of the Illinois Supreme Court should be affirmed or plaintiff's jurisdictional statement should be dismissed.

Respectfully submitted,

HARRY L. KINSER
McLAUGHLIN KINSER & BRYANT
135 S. LaSalle - Suite 1200
Chicago, Illinois 60603
782-8012
Counsel for Amicus Curiae

EDWARD J. McLAUGHLIN
KENNETH C. ROBBINS
McLAUGHLIN KINSER & BRYANT
135 S. LaSalle - Suite 1200
Chicago, Illinois 60603
Of Counsel

APPENDIX

PHEBUS, TUMMELSON, BRYAN & KNOX
Law Offices
136 West Main Street
P.O. Box 100
Urbana, Illinois 61801
(217) 367-1144

July 2, 1980

Mr. Harry L. Kinser
McLaughlin, Kinser & Bryant
135 S. LaSalle St.
Chicago, IL 60603

Re: Woodward, etc vs. George Green, Burnham City Hospital, et al No. 79-2033

Dear Mr. Kinser:

We have your letter of July 1, 1980. We represent the defendant, George Green. We have no objections to your appearing amicus curiae and filing a brief in that capacity. We consent to that.

Yours truly,

/s/ Hurshal C. Tummelson
Hurshal C. Tummelson

HCT:as

Law Offices
LEONARD M. RING
And Associates

July 22, 1980

Mr. Harry L. Kinser
McLaughlin, Kinser & Bryant
135 South LaSalle Street
Chicago, Illinois 60603

Re: Woodward vs. Burnham City Hospital
U.S. Supreme Court No. 79-2033

Dear Mr. Kinser:

I have been able to get permission for you to file an *amicus* brief in the above. If you still desire to do so, you may consider this communication as an authorization on the part of the plaintiff.

Very truly yours,

/s/ Leonard M. Ring
Leonard M. Ring

LMR:ar

THOMAS, MAMER, HAUGHEY & MILLER
Lawyers
Fifth Floor, First National Bank Building
Post Office Box 967
Champaign, Illinois 61820

July 9, 1980

Mr. Harry L. Kinser
General Counsel
Illinois Hospital Association
McLaughlin, Kinser & Bryant
135 South LaSalle Street
Chicago, Illinois 60603

Re: Carol C. Woodward, as Administrator of the Estate of Charles C. Woodward, deceased, and Carol C. Woodward, individually vs. Burnham City Hospital, a corporation, and George Green and Stan J. Bobowski in the U.S. Supreme Court No. 79-2033

Dear Mr. Kinser:

You have our consent to file a Brief in subject matter as amicus curiae. We welcome your support.

Very truly yours,

/s/ George S. Miller
George S. Miller

GSM:pac

RENO, O'BYRNE & KEPLEY
Attorneys at Law
501 West Church Street
P. O. Box 693
Champaign, Illinois
61820

July 17, 1980

Mr. Harry L. Kinser
General Counsel
Illinois Hospital Association
McLaughlin, Kinser & Bryant
134 S. LaSalle St.
Chicago, IL 60603

Re: Carol C. Woodward, etc. v. Burnham City Hospital *et al.* In the U. S. Supreme Court — No. 79-2033

Dear Mr. Kinser:

In response to your letter of July 1, 1980, please be advised that Burnham City Hospital has no objection to your filing an *amicus* brief in the above-referenced cause of action, and in fact welcomes the continued interest of the Illinois Hospital Association. Further, we would support any motion on your part to file such a brief in the face of Mr. Ring's recent objection to your participation. As I hope to have advised you by telephone today, I do not believe that the Hospital will be filing a response or motion at this time to the plaintiff's jurisdictional statement. It is my understanding, however, that counsel for Dr. Green will be filing a motion to dismiss, or in the alternative, affirm, with a supporting brief.

Very truly yours,

Stephen M. O'Byrne
/s/ Stephen M. O'Byrne

SMOB:cb